

Compliance Program

False Claims and Reporting Policy & Procedure

Unity House of Troy, Inc.

Unity House is committed to its role in preventing and detecting health care and other government fraud, waste, or abuse within health care, government grant programs, and the organization itself. In accordance with the federal Deficit Reduction Act 2005, Unity House is required to provide education concerning the federal and state False Claims Acts and other applicable laws related to fraud, waste, and abuse and whistleblower protections for the reporting of such issues (see appendix on page 14 for information about applicable laws).

The federal and state False Claims provisions help detect and prevent fraud by those who do business with the government. **Unity House prohibits the knowing preparation or submission of a false or fraudulent claim for payment to a government funded health care program or grant program.** Such a submission is a violation of federal law and can result in significant administrative and civil penalties under the federal False Claims Act, a federal statute that allows private citizens to help reduce fraud against the United States government. In New York State, the submission of a false claim can also result in civil and criminal penalties under the New York State False Claims Act as well as portions of New York State Finance Law, Social Services Law, and Penal Law, among other New York State statutes.

To ensure compliance with these laws, Unity House has adopted a Compliance Program, which includes a detailed Compliance Plan, Code of Conduct, written policies, procedures, and standards, and a training and education program. Unity House's Compliance Program is designed to detect, address, and prevent fraud, waste, and abuse and other misconduct or wrongdoing as well as to promote ethical and professional business standards and to ensure high quality and appropriate services to our clients. The Compliance Program provides guidance to employees and other agents on their responsibilities and to help them determine appropriate conduct in performing their duties. Unity House's Compliance Program supports the efforts of federal and state authorities in identifying instances of fraud, waste, and abuse in government health care and grant programs.

Applicability

This policy and procedure applies to employees, managers, executives, board members, volunteers, interns, vendors, subrecipients, and other agents who:

- Are required to participate in Unity House’s Compliance Program (includes all Unity House personnel, executives, board members, and volunteers)
- Furnish or otherwise authorize the furnishing of services funded through government programs,
- Perform billing and coding functions on behalf of Unity House,
- Voucher Unity House for services and goods that will be reimbursed through government-funded programs, and
- Monitor such functions.

Individuals covered by this policy are hereafter referred to in short as “employees, contractors, and other agents”.

Policy

Unity House is committed to the highest level of professional and ethical standards in delivering quality and appropriate services and goods to our clients. These standards can only be achieved and sustained through the actions and conduct of all Unity House personnel and partners. Unity House’s employees, contractors, and other agents have an obligation to familiarize themselves with, and adhere to, all applicable federal and state laws and regulations as well as agency and department policy and procedure that apply to the delivery and reimbursement of services and goods provided by Unity House.

Unity House requires billing activities to be performed with integrity and professionalism and in a manner consistent with the regulations of third-party payers, including Medicaid and government funders, as well as other applicable rules and regulations. Unity House has internal controls in place and conducts regular auditing and monitoring as part of its efforts to prevent and detect fraud, waste, and abuse or other negligent billing practices.

Additionally, Unity House requires employees, contractors, and other agents to share in the responsibility of preventing, detecting, and reporting suspected incidents of fraud, waste, and abuse. Employees, contractors, and other agents who reasonably suspect or are aware of the preparation or submission of a false claim, report, or any other potential incident of fraud, waste, or abuse or other violation of the Compliance Program or law **are required to make good faith reports** of such information to Unity House via their supervisor or other manager (to the extent the reporter is comfortable and the manager is not involved), directly to the Compliance Officer, or by submitting a report through Unity House's Compliance Hotline. Information on how to make a report to the Compliance Officer or hotline is included in this document's Procedure Section and is publicized via the agency's intranet and on posters that are displayed in accessible areas in each Unity House program site.

Unity House's Compliance Officer or her/his designee will investigate all allegations or suspicions of fraud, waste, and abuse or other violations swiftly and thoroughly in accordance with the agency's Compliance Program Investigations Policy and applicable law. All employees, contractors, and agents are required to assist in investigations as needed. Unity House will make every effort to correct and prevent any wrongdoing.

In accordance with Unity House's Compliance Program Discipline Policy and other applicable policy, failure to report, disclose, and/or assist in an investigation of fraud, waste, or abuse or other violation is a breach of the employee, contractor, or agent's obligation to Unity House and may result in disciplinary action up to and including termination.

In accordance with the Non-Intimidation and Non-Retaliation Policy and applicable law, Unity House will not retaliate against employees who, in good faith, bring forth claims of suspected fraud, waste, or abuse or other violation. Any employee who commits or condones any form of intimidation or retaliation will be subject to disciplinary action up to and including termination.

Unity House is committed to training, educating, and empowering its employees, contractors, and agents to detect, prevent, and report suspected incidents of fraud, waste, and abuse. In accordance with the Compliance Program Training and Education Policy, annual compliance training is mandatory for all employees, volunteers, managers, board members, and other agents and will, in part, cover false claims, whistleblower protections, and this policy and procedure.

Unity House will provide a copy of this policy to all employees, contractors, and agents covered by it and collect a signed acknowledgment. As required by the DRA of 2005, detailed information of the relevant statutes is included in this document and a plain language discussion of these laws is attached in the appendix, beginning on page 14.

Any questions about this policy, procedure, or other information presented in this document should be directed to the employee's supervisor or to the Compliance Officer.

Procedure

All employees have an affirmative duty and responsibility for reporting reasonably suspected misconduct and wrongdoing including violations of the federal or state false claims provisions, other applicable rules, regulations or laws, agency policy or procedure, or Unity House's Compliance Program or Code of Conduct. All suspected violations must be reported immediately to the employee's supervisor who will make concurrent notification to the Compliance Officer, to the Compliance Officer alone, or to Unity House's Compliance Hotline.

Employees, contractors, or agents can make a report by:

- **Contacting their supervisor or another manager** (to the extent they are not involved).
The manager will make concurrent notification to the Compliance Officer.

- **Contacting the Compliance Program directly. Confidential method.**

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- **Accessing Unity House's confidential Compliance Hotline.** This option is available 24 hours/day 365 days/year. The Hotline is operated by Lighthouse Services, an impartial third-party vendor, and offers *confidential and anonymous* reporting services. When a report is made to the Compliance Hotline, Lighthouse notifies the Compliance Officer. All

reports to the Compliance Hotline will be kept strictly confidential, unless the matter is turned over to law enforcement. Confidential means the Compliance Officer is the only person who will know the identity of the reporter. If a report made to the Compliance Hotline requires an investigation, the Compliance Officer will not specifically identify the reporter and will make all efforts to protect the reporter's identity throughout the course of the investigation.

Reporters may also choose to make an **anonymous report** to the Compliance Hotline. In such instances, no identifying information about the reporter is collected, and Lighthouse notifies the Compliance Officer of the content of the report only. Anonymous reports will still be investigated as warranted.

- **Lighthouse's Toll-Free Hotline:**
(800) 401-8004 (English speaking)
(800) 216-1288 (Spanish speaking)

- **Lighthouse's Hotline on the Web:**
<http://www.lighthouse-services.com/unityhouseny>

- **Lighthouse's Hotline via E-mail:**
reports@lighthouse-services.com (must include "Unity House" in the report)

- **Lighthouse's Hotline via Fax:**
(215) 689-3885 (must include "Unity House" in the report)

When a report is made to the Compliance Program, the individual who received the report will address the communication within 1 – 2 business days. The Compliance Officer will decide if an investigation is warranted, and any subsequent investigations will proceed in accordance with the Compliance Program Investigation Policy. If an employee or agent believes management is not responding to his/her report within a reasonable amount of time or believes management may be involved, the employee or agent should report the concern directly to the Compliance Officer. If the employee believes the Compliance Officer is not responding within a reasonable amount of time, the employee or agent should contact the Chief Executive Officer or Board of Directors. If the employee or agent has followed this policy and notified Unity House of the concern and feels that

Unity House is not addressing it, the individual retains the right to report his or her suspicions to the appropriate officials as provided in Section 740 and 741 of the NYS Labor Law.

Employees who, in good faith, report a possible violation in accordance with this policy will not be subjected to retaliation or intimidation. Please see the Compliance Program's Non-Retaliation & Non-Intimidation Policy for more information. "Good faith" means the report was made with honest intent and motive – that the employee or agent had a sincere and reasonable belief that a violation may have occurred. Reporting can be made in good faith but be wrong about the facts.

If it is found through the course of the investigation that an employee made a report in bad faith - that they knew the report was false or misleading - the employee will be subject to appropriate disciplinary action up to and including termination, in accordance with the Discipline Policy. Some examples of bad faith reporting include reporting another employee solely as an act of retaliation or for personal gain.

Mandatory Reporting

The Compliance Officer will make mandatory reports to the NYS Office of the Medicaid Inspector General or the NYS Department of Health (with concurrent reports to the Unity House Board of Directors and CEO) when the following compliance issues have been identified or are reasonably suspected within Unity House's Medicaid Programs:

- Fraud, waste, or abuse,
- Giving or receiving of bribes or kickbacks,
- Use of unacceptable medical and/or billing practices,
- Misuse or abuse of Medicaid services, and/or
- Falsifying of records or giving of false information.

NYS Office of the Medicaid Inspector General

Address: NYS OMIG Bureau of Medicaid Fraud Allegations
800 North Pearl Street
Albany, NY 12204

Phone: (877) 873-7283

Fax: (518) 408-0480

Email: <https://omig.ny.gov/contact-bmfa>

The Compliance Officer or designee will comply with mandatory reporting requirements for billing, payment, quality, contractual issues, and self-disclosures.

Unity House and any of its subrecipients must promptly refer to the DOJ Office of the Inspector General (OIG) any credible evidence that a principal, employee, agent, subrecipient, contractor, subcontractor, or other person has, in connection with funds of a federal award -- (1) submitted a claim that violates the False Claims Act; or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct. Potential fraud, waste, abuse, or misconduct involving or relating to funds under this award should be reported to the OIG by:

- Mail directed to the Office of the Inspector General, U.S. Department of Justice, Investigations Division, 1425 New York Avenue, N.W. Suite 7100, Washington, DC 20530; and/or
- DOJ OIG hotline at (800) 869-4499 (phone) or (202) 616-9881 (fax).

Additional information is available from the DOJ OIG website at <https://oig.justice.gov/hotline>.

Fraud, Waste, and Abuse Defined

Fraud

An intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable Federal or State law.

Waste

The overutilization or inappropriate utilization of services and misuse of resources, and typically is not a criminal or intentional act.

Abuse

Practices that are inconsistent with sound fiscal, business, or professional practices, and result in an unnecessary cost to the healthcare or other federal program, or in reimbursement for services that

are not necessary or allowed or that fail to meet professionally recognized standards of care. It also includes practices that result in unnecessary cost to the healthcare or other federal program.

Deficit Reduction Act of 2005

The Deficit Reduction Act, in part, requires covered entities to provide detailed information about:

- The federal False Claims Act (FCA)
- The federal Program Fraud Civil Remedies Act
- Other federal and state laws pertaining to civil or criminal penalties for false claims and statements
- Any whistleblower protections provided under such laws
- The role of such laws in preventing and detecting fraud, waste, and abuse
- Policies and procedures of the provider for preventing and detecting fraud, waste, and abuse.

Additionally, the DRA requires that a covered entity include a discussion of the above laws and of the rights of employees to be protected as whistleblowers. Summaries of the federal and New York State False Claims Acts are set forth below. Please also see Appendix A. – Federal & State False Claim Laws on page 14 for additional information.

Federal False Claims Act (31 U.S.C. § 3729 et. seq.)

What it does:

Allows a civil action to be brought against an organization provider who:

- Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval to any federal employee;
 - Knowingly makes, uses, or causes to be made or used a false record or statement to get a false or fraudulent claim paid;
 - Conspires to defraud the government by getting a false or fraudulent claim allowed or paid;
- or

- Knowingly uses (or causes to be used) a false record or statement to conceal, avoid, or decrease an obligation to pay money or transmit property to the federal government.

A person acts knowingly if he or she:

- 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.

There is no requirement that the person specifically intends to defraud the government through his or her actions or had actual knowledge that the claim was false.

A claim is any request or demand for money or property if the federal government provides any portion of the money or property in question. This includes requests or demands submitted to a contractor of the government as well as Medicaid claims.

Examples of a false claim:

- Knowingly billing or knowingly preparing to bill for services not rendered.
- Overbilling services.
- Misrepresenting the type of goods or services rendered.
- Violation of another law. Example: A claim was submitted appropriately, but the service was the result of an illegal relationship between a physician and the provider (kickbacks for referrals).
- Falsifying information in the medical record.
- Billing of medically unnecessary services.
- Billing for non-covered services.
- Billing for incorrect level of service.

The False Claims Act imposes liability on any person or entity that:

- Submits a claim to the federal government that he or she knows *or should know* is false,
- Submits a false record in order to obtain payment from the government, or
- Obtains money from the federal government to which it is not entitled and then uses false statements of records in order to retain the money (reverse false claim).

Remedies

A federal false claims action may be brought by the US Department of Justice Civil Division of the US Attorney's Office.

The Qui tam provision of the False Claims Act allows persons and entities with evidence of fraud against federal programs or contracts to sue the wrongdoer on behalf of the United States government. In other words, the individual files an action on behalf of the government. In such an action, the government would be the plaintiff and person who files the civil lawsuit would be the relator or *qui tam* plaintiff. The relator may receive an award of up to 30% of the damages realized by the government if (and after) the government recovers money from the defendant as a result of the lawsuit. Any person can be a relator or *qui tam* plaintiff, including employees or agents of Unity House.

Violation of the federal False Claims Act is punishable by a civil penalty of between \$10,781 and \$21,563 per false claim, plus three times the amount that the government was defrauded.

A statute of limitations says how much time may pass before an action may no longer be brought for violation of the law. Under the federal False Claims Act, the statute of limitations is six (6) years after the date of violation or three (3) years after the date when material facts are known or should have been known by the government, but no later than ten (10) years after the date on which the violation was committed.

The submission of false claims may also give rise to criminal liability and/or subsection of a person or entity to exclusion from participation in federal healthcare programs, such as Medicaid and Medicare or other federal grant programs.

Federal False Claims Act Anti-Retaliation Provision

The federal False Claims Act protects whistleblowers who expose companies, individuals, and contractors who defraud the government with respect to government funds, including federal health care programs and grant programs and payments from the government for goods and services. An employee who discovers wrongdoing that violates the federal False Claims Act and reports it in good faith is protected from being discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against in the terms and conditions of employment

by his or her employer because of lawful acts done by the employee, on behalf of his or her employer, of others in furtherance of the False Claims Act.

The anti-retaliation provision of the federal False Claims Act protects employees who engage in lawful acts in furtherance of a False Claims Act action. The protection against retaliation extends to whistleblowers whose allegations could legitimately support a federal False Claims Act case even if the case is never filed. However, the defendant must have some notice of the protected conduct, such as that the whistleblower was either taking action in furtherance of a qui tam action or assisting in an investigation or actions brought by the government. The whistleblower must also be able to show that the termination was in retaliation for the protected activities.

Any employee who is discharged, demoted, harassed, or otherwise discriminated against because of lawful acts by the employee in furtherance of an action under the federal False Claims Act is entitled to all relief necessary to make the employee whole, which may include reinstatement with comparable seniority as the whistleblower would have had but for the discrimination, double pay back, interest on back pay, and compensation for any special damages, including litigation costs and reasonable attorneys' fees.

Federal Program Fraud Civil Remedies Act of 1986 (31 U.S.C. § 3801 et. seq.)

The Program Fraud Civil Remedies Act of 1986 (“Administrative Remedies for False Claims and Statements”) allows for administrative recoveries by federal agencies. If a person presents or causes to be presented a claim or written statement that the person knows or has reason to know is false, fictitious, or fraudulent due to an assertion or omission to certain federal agencies (including the Department of Health and Human Services), then the agency receiving the claim may impose a penalty of up to \$10,781 (per claim or per statement).

The term “knows or has reason to know” is defined in the Act as a person who 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. No proof of specific intent to defraud is required.

Unlike the False Claims Act, a violation of this law occurs when a claim is submitted, not when it is paid. Further, the determination of whether a claim is false as well as the imposition of fines and penalties is made by the administrative agency.

New York State False Claims Act

The New York State False Claims Act is similar to the federal False Claims Act. Differences include:

- Both the Attorney General and local governments may bring actions to enforce the NYS False Claims Act.
- The penalties for violating the statute range from \$6,000 - \$12,000 for each false claim and up to three (3) times the amount of actual damages sustained by NYS or the local government as a result of the prohibited conduct.

New York State Whistleblower Law

New York Labor Law Article 20-C, “Retaliatory Action by Employers,” affords protections to employees who may notice and report inappropriate activities. Under this Article, an employer may not take any retaliatory personnel action against an employee because the employee:

- Discloses, or threatens to disclose (to a supervisor or to a public body) an activity, policy or practice of the employer that is in violation of law, rule, or regulation that creates and presents a substantial and specific danger to the public health or safety, or constitutes the crime of health care fraud, or that the employee reasonably believes, in good faith, constitutes improper quality of patient care;
- Provides information to or testifies before any public body conducting an investigation, hearing, or inquiry into any such violation of a law, rule, or regulation by such employer; or
- Objects to, or refuses to participate in any such activity, policy, or practice in violation of a law, rule, or regulation.

“Improper quality of patient care” is defined as a practice, action, or failure to act of an employer that violates law, and which relates to matters that may present a substantial and specific danger to public health or safety or a significant threat to the health of a specific patient.

Employees must first bring the alleged violation to the employer’s attention and give the employer a reasonable opportunity to correct the allegedly unlawful practice. However, there is no requirement to first notify the employer if the issue involves the improper quality of patient care

and presents an imminent threat to public health or safety or to the health of a specific patient, and the whistleblower reasonably believes in good faith that reporting to the employer would not result in corrective action.

The law allows employees who are subject of retaliatory action to bring civil action in court seeking relief such as injunction prohibiting continued retaliation, reinstatement, back pay, and compensation of reasonable costs. Additionally, if an employer acts in bad faith against an employee whistleblower, and if the employee's complaint concerned the improper quality of patient care, the employer may be subject to civil penalty of an amount not to exceed \$10,000, which is paid to a New York State fund devoted to improving the quality of patient care.

The law also provides that employees who bring an action without basis in law or fact may be held liable to the employer for its attorney's fees and costs.

APPENDIX A – FEDERAL & STATE FALSE CLAIM LAWS

Unity House of Troy, Inc.

It is Unity House of Troy Inc.'s policy that all affected persons shall comply with all applicable Federal and New York State false claims laws and regulations. Unity House has instituted various policies and procedures to ensure compliance with these laws and to assist the agency in preventing fraud, waste and abuse in federal health care and grant programs.

As part of Unity House's Compliance Program and in accordance with the Deficit Reduction Act of 2005, affected persons shall receive training on these laws, which are also summarized below. Please note that the information below is intended to provide a summary of the applicable laws and should not be considered a comprehensive analysis of the laws or the various rules that may apply under them. If you have questions about the application of these laws, please consult with the Compliance Officer (who may confer with Unity House's legal counsel, as needed).

FEDERAL LAWS

False Claims Act (31 USC §§3729-3733)

The False Claims Act (FCA) provides, in pertinent part, that:

(1) Any person who:

- A. Knowingly presents, or causes to be presented, to an officer or employee of the United States Government or a member of the Armed Forces of the United States 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 to get a false or fraudulent claim paid or approved by the Government;

- C. Conspires to defraud the Government by getting a false or fraudulent claim paid or approved by the Government; or
- D. Knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease 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 \$10,781 and not more than \$21,563 per claim, plus 3 times the amount of damages that the Government sustains because of the act of that person.

(2) For purposes of this section, the terms "knowing" and "knowingly" mean that a person, with respect to information:

- A. Has actual knowledge of the information;
- B. Acts in deliberate ignorance of the truth or falsity of the information; or
- C. Acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required (31 U.S.C. §3729).

While the FCA imposes liability 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 can also be found liable under the FCA (31 U.S.C. §3729(b)).

In sum, the FCA imposes liability on any person who submits a claim to the federal government that he or she knows (or should know) is false. An example may be a provider who submits a bill to Medicaid for medical services that are known to have not been provided.

The FCA 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/she 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 that obtains interim payments from Medicare 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 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.

Administrative Remedies for False Claims (31 USC Ch. 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, then the agency receiving the claim may impose a penalty of up to \$10,781 for each claim. The agency may also recover twice the amount of the claim.

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

FEDERAL WHISTLEBLOWER PROTECTIONS

Whistleblower Defined

“Whistleblowing” is generally defined as the disclosure of mismanagement, corruption, illegality or some other wrongdoing made by a person (usually an employee in a government agency or private enterprise) to the public or to those in authority. The person making the disclosure is often referred to as the “Whistleblower”.

Federal False Claims Act Provision

The False Claims Act prohibits discrimination by an employer against any employee for taking lawful actions under the False Claims Act. Any employee who is discharged, demoted, harassed, or otherwise discriminated against because of lawful acts by the employee in False Claims actions is entitled to all relief necessary to make the employee whole. Such relief may include reinstatement, double back pay, and compensation for any special damages, including litigation costs and reasonable attorney fees.

Occupational Safety & Health Act of 1970 (29 U.S.C. § 660 (c); 29 C.F.R. § 1904.36, 1977.3-4)

Occupational Safety and Health Act of 1970 created the Occupational Safety and Health Administration (OSHA) within the Department of Labor in order to reduce workplace hazards and implement safety and health programs. The federal agency, OSHA, sets and enforces workplace safety standards. The act prohibits an employer from discharging or discriminating against any employee who has exercised a right, made a complaint, or participated in an investigation or proceeding under or related to the act and establishes a procedure for relief.

Health Insurance Portability & Accountability Act (45 C.F.R. § 164.530 (g))

Health Insurance Portability and Accountability Act of 1996 (HIPAA) directed the United States Department of Health and Human Services to establish standards for the privacy and security of protected health information, among other things. In addition to protecting individuals who exercised a right under the act, HIPAA prohibits all covered entities from engaging in intimidating or retaliatory acts against any individual who refused to violate HIPAA or who has filed a complaint, participated in an investigation, compliance review, proceeding, or hearing under HIPAA.

Patient Safety & Quality Improvement Act of 2005 (42 U.S.C. § 299 et seq.)

The Patient Safety & Quality Improvement Act of 2005 establishes confidential reporting structure in which health care professionals and entities can voluntarily report information on errors in order to facilitate data analysis and encourage the development of patient safety improvements strategies.

Whistleblower Protection - The bill clearly prohibits any adverse employment action against any individual that in good faith reported information.

Age Discrimination Act of 1975 (29 U.S.C. § 623 (d); 45 C.F.R. § 90.46)

Age Discrimination Act of 1975 prohibits any entity receiving Federal assistance, such as payments under the Medicare program, from discriminating against any individual on the basis of age. The act also prohibits an employer from discriminating, intimidating, or retaliating against any employee or applicant that opposes performing an unlawful practice under the act or makes a charge, testifies, assists or participates in an investigation or proceeding under the act.

Rehabilitation Act of 1973, Section 504 (29 U.S.C. § 794; 45 C.F.R. § 84.6-7)

Rehabilitation Act of 1973, Section 504, prohibits discrimination against any individual with a disability by any entity that receives Federal financial assistance, such as payments under the Medicaid program. The law requires employers to adopt a grievance procedure for employees and allows for sanctions against person who had the ability to exercise control over the person who discriminated.

Americans with Disabilities Act (42 U.S.C. § 12203; 29 C.F.R. § 1630.12)

Americans with Disabilities Act prohibits any employer with 15 or more employees from discriminating against any individual with a disability in any employment practice including hiring, firing, advancement, training, and compensation. The act prohibits retaliation, coercion, interference, or intimidation in relation to any right provided or protected under the act.

Fair Labor Standards Act (29 U.S.C. § 215(a)(3))

Fair Labor Standards Act establishes minimum standards for fair pay and hours for employees and applies to most employers in the country. The act also prohibits employers from discharging or discriminating in any manner against any employee that has filed a complaint or participated in any investigation or proceeding under the act.

Family Medical Leave Act (29 U.S.C § 2615; 29 C.F.R. § 825.220)

Family Medical Leave Act requires employers with at least 50 employees to grant eligible employees up to 12 workweeks of unpaid leave during a 12-month period to tend to a medical

condition of the employee or to the employee's family. The act prohibits discrimination, interference, or retaliation against any individual whether or not an employee, who exercised rights, made inquiries, filed a complaint, or participated in an investigation under this act.

NEW YORK STATE LAWS

New York's false claims laws fall into two categories: civil and administrative **and** criminal laws. Some apply to recipient false claims and some apply to provider false claims, and, while most are specific to healthcare or Medicaid, some of the "common law" crimes apply to areas of interaction with the government.

CIVIL AND ADMINISTRATIVE LAWS

NY False Claims Act (State Finance Law, §§187-194)

The NY False Claims Act (NY FCA) closely tracks the Federal False Claims Act. It imposes penalties and fines on individuals and entities that file false or fraudulent claims for payment from any state or local government, including health care programs such as Medicaid. The penalty for filing a false claim to New York State is \$6,000 - \$12,000 per claim, and the recoverable damages are between two and three times the value of the amount falsely received. In addition, the false claim filer may have to pay the government's legal fees.

The NY FCA allows private individuals (as *qui tam plaintiffs*) to file lawsuits in state court as if they were state or local government parties. If the suit eventually concludes with payments back to the government, the person who started the case can recover 25-30% of the proceeds if the government did not participate in the suit or 15-25% if the government did participate in the suit.

Social Services Law §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 \$2,000 per violation. If repeat violations occur within 5 years, a

penalty up to \$7,500 per violation may be imposed if they involve more serious violations of Medicaid rules, billing for services not rendered, or providing excessive services.

Social Services Law §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 person's or the person's family's needs are not taken into account for 6 months if a first offense, 12 months if a second (or once if benefits received are over \$3,900), and five years for four or more offenses.

CRIMINAL LAWS

Social Services Law §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.

Social Services Law § 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 and 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.

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 law 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.

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 involve 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 intent to defraud the state or a political subdivision. It is a Class E felony.

Penal Law Article 176, Insurance Fraud

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

- A. Insurance Fraud in the 5th degree involves intentionally filing a health insurance claim knowing that it is false. It is a Class A misdemeanor.
- B. Insurance fraud in the 4th degree is filing a false insurance claim for over \$1,000. It is a Class E felony.
- C. Insurance fraud in the 3rd degree is filing a false insurance claim for over \$3,000. It is a Class D felony.
- D. Insurance fraud in the 2nd degree is filing a false insurance claim for over \$50,000. It is a Class C felony.

- E. Insurance fraud in the 1st degree is filing a false insurance claim for over \$1 million. It is a Class B felony.
- F. Aggravated insurance fraud is committing insurance fraud more than once. It is a Class D felony.

Penal Law Article 177, Health Care Fraud

Applies to claims for health insurance payment, including Medicaid, and contains five crimes:

- A. Health care fraud in the 5th degree is knowingly filing, with intent to defraud a health plan, a claim for payment that intentionally has false information or omissions. It is a Class A misdemeanor.
- B. Health care fraud in the 4th degree is filing false claims and annually receiving over \$3,000 in aggregate. It is a Class E felony.
- C. Health care fraud in the 3rd degree is filing false claims and annually receiving over \$10,000 in the aggregate. It is a Class D felony.
- D. Health care fraud in the 2nd degree is filing false claims and annually receiving over \$50,000 in the aggregate. It is a Class C felony.
- E. Health care fraud in the 1st degree is filing false claims and annually receiving over \$1 million in the aggregate. It is a Class B felony.

NEW YORK LAWS RELATED TO WHISTLEBLOWER PROTECTIONS

NY False Claim Act (State Finance Law §191)

The NY False Claim Act also provides protection to any current or former employee, contractor or agent who is 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 individual 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.

New York Labor Law §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.

New York Labor Law §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.