

**VILLAGE CARE OF NEW YORK  
CORPORATE COMPLIANCE PROGRAM  
POLICY AND PROCEDURE MANUAL**

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| <b>SUBJECT: COMPLIANCE WITH FEDERAL AND STATE FALSE CLAIMS LAWS AND DETECTION AND PREVENTION OF FRAUD, WASTE AND ABUSE</b> |  | <b>POLICY CODE: COMP-8</b> |
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| <b>ADMINISTRATIVE APPROVALS:</b>   |  |                            |
| <p>DATE: <u>1/1/07</u> BY: <i>Arthur G. Webb</i></p> <p>DATE: <u>12/29/09</u> BY: <i>Emmanuel Delidov</i></p>              |  |                            |

**POLICY**

Village Care of New York and its affiliated entities (“the organization”) are committed to complying with the requirements of Section 6032 of the Federal Deficit Reduction Act of 2005 and all other federal and state laws prohibiting fraud, waste and abuse in seeking reimbursement under the Medicaid and Medicare programs, and to preventing and detecting any fraud, waste, or abuse in the organization. To this end, the organization maintains a compliance program and strives to educate its work force on fraud and abuse laws, including the importance of submitting accurate claims and reports to the Federal and State governments. The organization’s compliance policies and procedures are set forth in detail in its compliance plan, and in the employee handbook provided to each employee.

The organization prohibits the knowing submission of a false claim for payment from a federally or state-funded health care program or insurer. Such a submission is a violation of Federal and State law and can result in significant administrative and civil penalties under the Federal False Claims Act, a Federal statute that allows private persons to help reduce fraud against the United States government. The organization also prohibits the knowing submission of a false claim for payment from a private person or payor.

In furtherance of this policy and to comply with the Deficit Reduction Act, the organization provides to employees, officers, directors, contractors and agents the following information about its policies and certain relevant Federal and State laws. This policy will be amended as necessary to comply with any state and federal regulations promulgated pursuant to the requirements of Section 6032 of the Deficit Reduction Act and the State Medicaid and Medicare Plan.

## **SCOPE OF POLICY**

This policy applies to all officers, employees, contractors and agents of Village Care of New York, Inc. and its affiliated entities (“the organization”). For purposes of this Policy and Procedure, the following definitions shall apply:

1. The term “officer” shall mean each of the officers duly appointed pursuant to the corporate by-laws of Village Care of New York, Inc. and its affiliated entities.
2. The term “employee” shall mean employees, students, trainees, volunteers, officers, contractors, agents, and members of the Medical and Dental Staff of the organization.
3. The term “contractor” or “agent” shall mean any contractor, subcontractor, agent or other person which or who, on behalf of the organization, furnishes, or otherwise authorizes the furnishing of health care items or services, performs billing or coding functions, or is involved in the monitoring of health care provided by the organization.

## **PROCEDURE**

To assist the organization in meeting its legal and ethical obligations, any employee who reasonably suspects or is aware of the preparation or submission of a false claim or report or any other potential fraud, waste, or abuse related to a Federally or State funded health care program is required to report such information to his/her supervisor or the organization’s corporate compliance officer. Any employee of the organization who reports such information will have the right and opportunity to do so anonymously and will be protected against retaliation for coming forward with such information both under the organization’s internal compliance policies and procedures and Federal and State law. However, the organization retains the right to take appropriate action against an employee who has participated in a violation of Federal or State law or organizational policy.

The organization commits itself to investigate any suspicions of fraud, waste, or abuse swiftly and thoroughly and requires all employees to assist in such investigations. If an employee believes that the organization is not responding to his or her report within a reasonable period of time, the employee shall bring these concerns about the organization’s perceived inaction to the organization’s corporate compliance officer. Failure to report and disclose or assist in an investigation of fraud and abuse is a breach of the employee’s obligations to the corporate compliance officer and may result in disciplinary action.

This Policy and Procedures and a summary of the federal and state laws (as they may be amended from time to time) applicable to this Policy and Procedures shall be posted electronically on the website of the organization located at [www.vcnny.org/compliance](http://www.vcnny.org/compliance).

# FEDERAL & NEW YORK STATUTES RELATING TO FILING FALSE CLAIMS

## I. FEDERAL LAWS

### False Claims Act (31 USC §§3729-3733)

(a) Liability For Certain Acts.

(1) IN GENERAL. –Subject to paragraph (2), The False Claims Act ("FCA") provides, in pertinent part, that, 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 improperly avoids or decreases an obligation to pay or transmit money or property to the Government is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 1461note; 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 claim 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 the 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-bases 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.

**31 U.S.C. § 3729.** 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 or provides information to be used in the submission of a claim for payment by Federal Government 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) is 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 who 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 False Claims Act provides that private parties may bring an action on behalf of the United States. 31 U.S.C. 3730 (b). These private parties, known as "*qui tam* relaters," may share in a percentage of the proceeds from a False Claims Act action or settlement.

Section 3730(d)(1) of the False Claims Act provides, with some exceptions, that a *qui tam* relaters, 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 False Claims Act action depending upon the extent to which the relater substantially contributed to the prosecution of the action. When the Government does not intervene, section 3730(d)(2) provides that the relater 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 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, then 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, not 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'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.

### **A. CIVIL AND ADMINISTRATIVE LAWS**

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

The NY False Claims Act 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 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 Act allows private individuals to file lawsuits in state court, just 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, 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 live years for 4 or more offenses.

## **B. 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. It 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 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.

**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 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.

### III. RELIEF FROM RETALIATORY ACTIONS

**Federal False Claims Act (31 U.S.C. §3730(h))** Under The Federal False Claims Act any employee, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of their employment because of lawful acts done by the employee, contract, or agent on behalf of the employee, contractor, or agent or associated others in furtherance of other efforts to stop 1 or more violations of this subchapter. Relief shall include reinstatement with comparable seniority status that employee, contractor, or agent would have had but for the discrimination, 2 times the amount back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

**NY False Claim Act (State Finance Law §191)** The False Claim Act also provides protection to *qui tam* relaters 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* relater 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.