

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

SUBJECT: COMPLIANCE WITH FEDERAL AND STATE FALSE CLAIMS LAWS AND DETECTION AND PREVENTION OF FRAUD, WASTE AND ABUSE		POLICY CODE:
EFFECTIVE DATE: 1/1/07	ORIGINAL DATE ISSUED:	PAGE 1 OF 5
ADMINISTRATIVE APPROVALS:		
DATE: _____ BY: _____		
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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.

FEDERAL LAWS

1. The Federal False Claims Act - 31 U.S.C. § 3729:

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

(a) Any person who (1) 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; (2) 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; (3) conspires to defraud the Government by getting a false or fraudulent claim paid or approved by the Government;. . . or (7) 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 \$5,000 and not more than \$10,000, plus 3 times the amount of damages which the Government sustains because of the act of that person

(b) For purposes of this section, the terms "knowing" and "knowingly" mean that a person, with respect to information (1) has actual knowledge of the information; (2) acts in deliberate ignorance of the truth or falsity of the information; or (3) acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

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 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 or she 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 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.

The FCA provides protection to qui tam relators 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. Federal Program Fraud Civil Remedies Act (“PFCRA”)

This federal law is similar in structure to the False Claims Act, but provides administrative remedies against persons or entities that make or cause to be made a false claim for money, property or services to certain federal agencies including the Department of Health and Human Services, which operates the Medicare and Medicaid programs. The law provides that any person making, presenting, submitting or causing to submit a claim that the person knows or has reason to know is false, fictitious or fraudulent is subject to civil monetary penalties of up to \$5000 per false claim and up to twice the amount of the fraudulent claim. The PFCRA uses the same definition of “knows or has reason to know” as used in the False Claims Act and explained above. Violations are investigated by the Department of Health and Human Services and enforcement actions must be approved by the Attorney General.

NEW YORK STATE LAWS

1. **False Claims Act (NY Finance Law Article XIII):** New York State False Claims Act, Article XIII of the Finance Law, which mirrors the Federal False Claims Act described above, prohibits an individual from “knowingly” presenting or causing to be presented a false or fraudulent claim for payment or approval, with civil penalties of \$6,000 to \$12,000 plus treble damages to both State and local government and, as applicable, costs and attorneys’ fees. The law specifically does not apply to acts occurring by mistake or due to mere negligence. The law also permits individuals who acquire knowledge of violations through non-public or governmental sources to commence “Qui Tam” actions and protects employees who initiate or cooperate in enforcement actions through “Whistleblower” provisions.

2. **Civil Penalties (NY Social Services Law 145-b):** New York State makes it unlawful to knowingly make a false statement or representation (or by deliberate concealment of any material

fact or other fraudulent scheme or device) to attempt to obtain, or to obtain, Medicaid payments for services or supplies furnished under the New York State Medical Assistance Program. A violation of this law can subject a person or entity, to civil damages equal to three times the amount falsely overstated (or in the case of non-monetary false statements or representations, three times the amount of damages sustained as a result of the violation or \$5,000, whichever is greater.) In addition, the person or entity may be required to pay a civil monetary penalty of up to \$2,000 for each item or services as restitution to the Medical Assistance Program if the person or entity knew, or had reason to know that (i) the payment involved the providing or ordering of care, services, or supplies that were medically improper, unnecessary or in excess of the documented medical needs of the person to whom they were furnished; (ii) the care, services or supplies were not provided as claimed; (iii) the person who ordered or prescribed care, services or supplies which were medically improper, unnecessary or in excess of the documented medical need of the person to whom they were furnished was suspended or excluded from the Medical Assistance Program at the time the care, services or supplies were furnished; or (iv) the services or supplies for which payment was received were not, in fact, provided.

3. Health Care Fraud (NY Penal Law 177). The New York State Penal Law has a specific set of provisions entitled “health care fraud” that imposes a range of criminal fines and jail terms depending on the amount of money involved in the fraudulent action. A person or entity may be prosecuted under these laws if they are acting with intent to defraud a private or public health plan (including, e.g., Medicaid or an HMO), they knowingly and willfully provide materially false information or omit material information for the purpose of receiving payment for health care items or services that they are not otherwise entitled to receive. Since this is a specific intent crime, the prosecutor must prove beyond a reasonable doubt that the individual had specific intent to commit the crime. The severity of the penalty for committing this crime corresponds to the amount of payment wrongfully received from a single health plan in a one-year payment.

4. Whistleblower Protections (NY Labor Law 740): Under New York’s Labor Law, employers are prevented from taking any retaliatory actions against an employee who in good faith discloses (or threatens to disclose) to a supervisor or to a public body that the employer is violating the law and the violation presents a substantial and specific danger to the public health and safety or constitutes the crime of health care fraud. To bring an action under this provision, the employee must first bring the alleged violation to the attention of the employer and give the employer a reasonable opportunity to correct the allegedly unlawful practice. The law allows employees who are the subject of a retaliatory action to bring a civil action in court and seek relief such as injunctive relief to restrain continued retaliation; reinstatement, back-pay and compensation of reasonable costs. The Act also provides that employees who bring an action without basis in law or fact may be held liable to the employer for its attorney fees and costs.