

# **THE NEW YORK FOUNDLING**

## **COMMITMENT TO COMPLIANCE HANDBOOK**

**CODE OF CONDUCT AND COMPLIANCE  
STANDARDS**

**COMPLIANCE PROGRAM STRUCTURE  
AND GUIDELINES**

**POLICIES AND PROCEDURES**

**December 2012**

# COMMITMENT TO COMPLIANCE

The New York Foundling (the “NYF” or the “Agency”) is dedicated to ensuring a culture of compliance, honesty and integrity. Our Compliance Program has two goals. The first goal is the provision of the highest possible quality care and outcomes of care by respecting the rights of each of our residential and non-residential clients. The second goal – of equal importance – is to provide such care and services by conducting the business of the agency in an ethical manner, that is pursuant to the highest ethical, business and legal standards. Our Compliance Program is dedicated to preventing and detecting instances of fraud, waste and abuse in health care programs funded by the federal and state governments. Federal and state health care programs include, for example, certain social services programs and other programs where services are paid for by the Children’s Health Insurance Program or Medicaid

**(A) Compliance Program’s Code of Conduct.** The Code of Conduct sets forth the general standards of conduct to which we all must adhere.

**(B) Compliance Program Structure and Guidelines.** The Compliance Program Structure and Guidelines (the “Guidelines”) summarize the structure and key elements of the Compliance Program.

**(C) Specific Compliance Policies and Procedures.** Certain compliance issues and risk areas have been addressed in separate compliance policies and procedures. Such policies and procedures may affect all personnel, or may only affect certain individuals, and will be distributed accordingly.

The Compliance Program is designed to implement the Code of Conduct and prevent violations of applicable laws and regulations and, where such violations occur, to promote their early and accurate detection and prompt resolution through education, monitoring, disciplinary action, and other appropriate remedial measures. The Compliance Program applies to all officers, directors, employees and agents who transact with the NYF. Because of the importance of the Compliance Program, we require that all personnel cooperate fully. All personnel will be given a copy of this Commitment to Compliance Handbook (the “Handbook”). You will be required to review and become familiar with its contents and sign an acknowledgement form. In addition to this Handbook, the NYF will provide you with formal training regarding the Code of Conduct and Compliance Program policies and procedures.

## COMPLIANCE PROGRAM – REPORTING

All employees and agents of the NYF are expected to report suspected misconduct or possible violations of the Compliance Program to the Compliance Officer, at the number or e-mail address below, or to their supervisor. Employees and agents may also report compliance issues or concerns to the Compliance Hotline at the number below. Report of compliance issues or concerns may be made anonymously, if you wish (whether through the Compliance Hotline or otherwise). The Compliance Hotline is not answered; calls go directly to voicemail. The identity of the reporting employee or agent will be kept confidential to the extent possible, consistent with the need to investigate the issue(s) raised. Retaliation or intimidation in any form against an individual who in good faith reports possible unethical or illegal conduct is strictly prohibited. Acts of retaliation and/or intimidation should be immediately reported to the Compliance Officer or to the Hotline.

| Name  | Contact Information                                     |
|---|---|
| <b><u>Compliance Officer</u></b><br>Shanna Gumaer | Ph: (212) 886-4071<br>Email: Compliance@NYFoundling.org |
| <b><u>Compliance Hotline</u></b>                  | Ph: 212-886-4042  |

**Note:** The Compliance Program’s Hotline reporting system is separate from the Agency’s Concern Line, which remains available to all personnel and clients of the NYF to report incidents or grievances concerning quality of care issues.

# CODE OF CONDUCT

This Code of Conduct sets forth the Agency's standards of conduct that all individuals associated with the NYF are expected to follow in their employment or course of business dealings with the NYF. Compliance with the Code of Conduct is a condition of employment, and violation of the Code's compliance standards (as discussed herein) will result in discipline being imposed, up to and including, possible termination of employment or termination of contract.

## **I CODE OF CONDUCT: MISSION AND VALUES**

- ▶ The Agency is committed not only to providing clients with high quality and caring services, but also to providing those services pursuant to the highest ethical, business and legal standards. These high standards must apply to the NYF's interactions with everyone with whom we deal. This includes the NYF's clients, other health care providers, companies with whom we do business, government entities to whom we report, and the public and private entities from whom reimbursement for services is sought and received. In this regard, all employees and agents must not only act in compliance with all applicable legal rules and regulations, but also strive to avoid even the appearance of impropriety. While the legal rules are very important, the NYF must hold itself up to even higher ethical standards.
- ▶ In short, the NYF does not and will not tolerate any form of unlawful or unethical behavior by anyone associated with the Agency. The NYF expects and requires all employees and agents to be law-abiding, honest, trustworthy, and fair in all of their business dealings. To ensure that these expectations are met, the Compliance Program has become an integral part of our corporate mission and business operations.

## **II CODE OF CONDUCT: STANDARDS**

- ▶ **General Standards**
  - Employees and agents of the NYF behave in a legal and ethical manner as they work to achieve the Agency's mission. They obey the laws and statutes of the federal government, New York State and any local jurisdiction in which they do business.
  - Employees and agents of the NYF refrain from any act or omission that is of a dishonest, deceitful, or fraudulent nature during the course of their assigned duties.
  - Employees and agents of the NYF refrain from and do not permit, any activity or pursuit of financial gain or other personal benefits that would interfere with the exercise of good judgment and skills.

- Employees and agents of the NYF must comply with the Code of Conduct; report any action(s) they think may be unlawful, inappropriate or in violation of the Code of Conduct, or any other compliance policy or procedure; fully cooperate with inquiries by the Compliance Officer and other compliance personnel; and work to correct any improper practices that are identified.
- No retaliation or intimidation for good faith reporting of any suspected violation will be tolerated. Retaliation and intimidation in any form violate this Code of Conduct and the Compliance Program, and are strictly prohibited.

▶ **Standards Relating to Quality of Care**

- Individuals who receive services from the NYF will receive the highest quality of services possible.
- Employees and agents of the NYF respect the rights of clients with regard to consenting to participate in, and making decisions about, their care and support.
- Employees and agents of the NYF will provide appropriate care to all clients without regard to age, gender, ethnicity, race, color, national origin, heritage, sexual orientation, diagnosis, creed, religious belief, marital status, medical condition, or source of payment.

▶ **Standards Related to Documentation of Clinical Services, Coding and Billing:**

- Only medically appropriate services that are consistent with accepted standards of clinical care may be billed. Billing and coding must always be based on adequate documentation of the medical justification for the service provided and the bill submitted, and such documentation must be accurate, truthful and comply with all applicable laws, rules and regulations.
- Employees and agents are strictly prohibited from knowingly engaging in any form of up-coding of any clinical service(s), or any other billing practice that violates any applicable law, rule, or regulation. In addition, all documentation, regardless of any legal requirements, must be sufficient to satisfy the NYF's own internal standards for quality assurance as to the services rendered.
- No employee or agent may ever misrepresent charges or services to or on behalf of the government, a patient, or payer. False statements, intentional omissions, or deliberate and reckless misstatements to government agencies or other payers will expose the individual involved to discipline,

up to and including termination of employment and contract, and that individual may be subject to criminal penalties.

- If the NYF receives payments to which it is not entitled from a governmental or private payer, such payments will be reported and refunded in accordance with applicable law.
- All employees and agents must comply with all applicable federal and state laws and regulations governing the submission of billing claims and related statements. A detailed description of: (i) the federal False Claims Act; (ii) the federal Program Fraud Civil Remedies Act; (iii) state civil and criminal laws pertaining to false claims; and (iv) the whistleblower protections afforded under such laws is provided in Appendix A to this Handbook.

▶ **Standards Relating to Referrals:**

- In accordance with federal and state law, the NYF does not solicit, offer, pay or receive payment from health care practitioners or providers or anyone else, whether directly or indirectly, for referrals. All referral decisions shall be made based solely on medical necessity and quality of care concerns.

▶ **Business and Marketing Practices:**

- The NYF will forgo any business transaction or opportunity that can only be obtained by improper or illegal means, and will not make any unethical or illegal payments to induce the use of our services.
- All business records must be accurate, truthful and complete, with no material omissions. Similarly, all reports submitted to governmental agencies, insurance carriers, or other entities will be accurately and honestly made.
- The NYF will generate reports regarding credit balances owed to governmental and third-party payers, and will make refunds to payers in a timely manner when appropriate.
- Marketing products and presentations contain accurate and reasonably current information and do not misrepresent program operations, services, supports, or outcomes. In general, marketing materials do not contain any Protected Health Information (PHI).
- Employees adhere to all legal and policy requirements pertaining to purchasing (e.g. bid specification, bid opening, and disclosure of outcome) for all goods and services purchased by the NYF.

▶ **Standards Relating to Mandatory Reporting:**

- The NYF will ensure that all incidents and events that are required to be reported under federal and state mandatory reporting laws, rules and regulations are reported in a timely manner.
- The Compliance Officer or designee will receive periodic reports from CQI to monitor compliance with mandatory reporting requirements and the Agency's Incident Management Policy.

▶ **Standards Relating to Confidentiality**

- In compliance with federal and state privacy laws, including the Health Insurance Portability and Accountability Act (HIPAA), all employees and agents of the NYF will keep client information confidential, except when disclosure is authorized by the patient or permitted by law.
- Confidential information acquired by employees and agents about the business of the NYF must also be held in confidence and not used for personal gain, either directly or indirectly.

▶ **Standards Relating to Credentialing and Exclusions**

- All clinicians employed by, or under contract with, the NYF will be properly certified or licensed (as appropriate) pursuant to applicable federal and state requirements. The NYF will ensure compliance with all federal, state and local laws, rules, and regulations regarding credentialing on an ongoing basis.
- The NYF will conduct routine reviews to ensure no employees or agents are listed on the Federal Office of Inspector General's List of Excluded Individuals/Entities, the New York State Office of the Medicaid Inspector General's List of Restricted, Terminated or Excluded Individuals or Entities, or the General Services Administration's System for Award Management (formerly the "Excluded Parties List System").

▶ **Government Inquiries:**

- Government agents may from time to time audit or investigate providers who receive funding from federal or state health care programs (such as Medicaid or CHIP). The NYF will not attempt to obstruct such communication. It is recommended, however, that employees and agents contact the Compliance Officer before speaking with any government agents.
- Employees and agents must check with the Compliance Officer before responding to any request to disclose the NYF's documents or information to any outside party.

- It is the NYF’s policy to comply with the law and cooperate with legitimate governmental investigations or inquiries. All responses to requests for information must be accurate and complete. Any action by employees and agents to destroy, alter, or change any records in response to a request for such records is prohibited and shall subject the individual to disciplinary action such as immediate termination of employment, termination of contract and possible criminal prosecution.

## **COMPLIANCE PROGRAM STRUCTURE AND GUIDELINES**

The following eight elements comprise The NYF’s Compliance Program. Each element governs a different and important aspect of the Compliance Program. Following is a brief summary of each element, and a brief summary of how it is incorporated into the Compliance Program.

▶ **Element 1: Written Policies and Procedures**

- Formal Written Policies Adopted by the Board. The NYF has developed and implemented (and will continue to develop and implement) written policies and procedures addressing its commitment to compliance, as well as more specific policies and procedures addressing compliance issues and risk areas applicable to the NYF. The Code of Conduct, these Compliance Program Structure and Guidelines (the “Guidelines”), and various other compliance policies and procedures have all been formalized in writing and adopted by the Board of Trustees. The Board will meet annually to discuss any changes, if necessary, to these or any other Compliance Program documents. The NYF’s Compliance Program policies and procedures (see Section 3 – B) include, but are not limited to, the following:
  - (1) Billing Standards
  - (2) Compliance Reviews for Excluded or Ineligible Individuals/Entities
  - (3) Compliance Reviews of Clinical Staff Credentials
  - (4) Compliance with Federal Anti-Referral Laws
  - (5) Conflicts of Interest
  - (6) Federal Deficit Reduction Act of 2005: Detection and Prevention of Fraud, Waste, Abuse and Applicable Federal and State Laws
  - (7) Non-Intimidation and Non-Retaliation for Participation in Compliance Program
  - (8) On-Going Risk Assessment, Tracking New Developments and Compliance Training
  - (9) Protocols for Investigations, Implementing Corrective Action and Discipline

- (10) Record Retention
- (11) Responding to Government Inquiries

► **Element 2: Designation of a Compliance Officer**

- Duties of Compliance Officer. The NYF has designated a Compliance Officer who maintains day-to-day responsibility for the operation of the Compliance Program. The Compliance Officer reports directly to the NYF's President and Chief Executive Officer and the Board regarding compliance issues. The Compliance Officer may also engage other individuals to assist with the oversight and management of the Compliance Program, as necessary and appropriate.
- Governance Committee. The Governance Committee of the Board of Trustees is responsible for oversight of the Compliance Program. The Governance Committee meets periodically regarding compliance issues that may arise and any corrective action, investigation or follow-up that may be appropriate. This Committee also reports to the full Board, as necessary, concerning both the Compliance Program and any specific issues that may arise and require the Board's review. The Committee is also responsible for verifying, based on reports from the Compliance Officer and senior management, that the Compliance Program is operating in an appropriate and effective manner.
- Compliance Committee. The Compliance Committee assists the Compliance Officer in the execution of his/her duties and is responsible for monitoring the implementation and operation of the Compliance Program. The Compliance Committee meets quarterly or more frequently as necessary, regarding compliance issues that may arise and any corrective action, investigation or follow-up that may be appropriate. This Committee ensures that the Governance Committee of the Board of Trustees, or any committee subsequently appointed by the Governance Committee, is kept informed concerning the operation of the Compliance Program.
- Annual Report and Work Plan. The Compliance Officer will be responsible for creating and implementing an annual compliance work plan (the "Work Plan"), which outlines the NYF's annual reviews, initiatives and compliance goals for the year. The Compliance Officer will, at least annually, report to the Board to provide and obtain approval for the Work Plan and report on the prior year's compliance efforts. As necessary, the Compliance Officer will meet more frequently with the Board to report on any ongoing issues or new compliance issues as they arise.

▶ **Element 3: Training and Education**

- Distribution of Compliance Materials. The Compliance Officer is responsible for ensuring that the Code of Conduct and Guidelines are distributed to all employees and agents, and for maintaining a file containing each person's signed acknowledgment of receipt form. All newly hired or engaged individuals must also receive a copy of the Code of Conduct and Guidelines and sign the acknowledgment of receipt form.
- Required Training. The Compliance Officer will develop a schedule of training on compliance issues for all employees. The training for different groups will focus on the legal requirements most relevant to their particular jobs, including a periodic review of departmental compliance procedures. The Compliance Officer will maintain a record of all employees and agents who have attended such training.
- Remedial Training. The Compliance Officer will also be responsible for any remedial training that is required as part of the Compliance Program.

▶ **Element 4: Communication Lines to the Compliance Officer**

- Reporting and Confidentiality. All employees and agents are required to report suspected misconduct or possible violations of the Code of Conduct and Guidelines, or any other compliance policy or procedure, to their supervisor, Chairperson (in the case of Board Members) or to the Compliance Officer. Employees and agents may also report issues to the Compliance Hotline. Employees and agents may report anonymously, if they so choose (through the Hotline or otherwise). The identity of any reporting employee or agent will be kept confidential to the extent possible, consistent with the need to investigate the issue(s) raised and applicable law.
- Informing the Compliance Officer. Upon receiving information regarding a possible compliance issue or suspected violation, the individual informed shall promptly inform the Compliance Officer so that he/she may promptly address the issue.

▶ **Element 5: Disciplinary Action**

- Discipline. Employees and agents will be subject to disciplinary action, ranging from verbal warnings to termination of employment or termination of contract regardless of their level or position, if they fail to comply with any applicable laws or regulations applicable to the Compliance Program, the Code of Conduct or compliance policies and procedures. Disciplinary action shall be taken fairly and firmly enforced as appropriate for:

- (1) Authorization or participation in actions that violate federal and/or state laws and regulations, the Code of Conduct or compliance policies and procedures;
- (2) Failure to report a violation, or suspected violation, of federal and/or state laws and regulations, the Code of Conduct or Compliance policies and procedures;
- (3) Encouraging, directing, facilitating or permitting either actively or passively non-compliant behavior;
- (4) Failure by a violator's supervisor(s) to detect and report a compliance violation, if such failure reflects inadequate supervision or lack of oversight;
- (5) Refusal to cooperate in the investigation of a potential violation; and
- (6) Intimidation of or retaliation against an individual for reporting a compliance violation.

► **Element 6: Identification of Compliance Risk Areas and Non-Compliance**

- Tracking New Developments. The Compliance Officer, or a designee, will ensure that all relevant publications issued by government or third-party payers regarding compliance rules and protocols are reviewed and appropriately implemented, including, but not limited to, publications and alerts issued by the Office of Inspector General (the "OIG") for the U.S. Department of Health and Human Services and the New York State Office of Medicaid Inspector General (the "OMIG").
- Compliance Assurance Reviews. In addition to responding to reported compliance issues or questions, the Compliance Officer will also ensure that reviews of documentation, coding, billing, and business practices are conducted on a regular, periodic basis.
- Risk Assessment. As part of the Compliance Program, there is a system in place to ensure an on-going assessment of the compliance risks that potentially face the NYF. Identified risks will be incorporated into the annual Work Plan for the following year.
- Annual Work Plan. On an annual basis, the Compliance Officer will formulate a compliance work plan, with the assistance of the Compliance Committee, and present the Work Plan to the Governance Committee of the Board of Trustees.

► **Element 7: Responding to Compliance Issues**

- Investigation, Corrective Action and Responses to Suspected Violations. Whenever a compliance problem or billing error is alleged or discovered, regardless of the source, the Compliance Officer will conduct a reasonable investigation. Based on the results of the investigation, the Compliance

Officer will ensure that appropriate and effective corrective action is implemented, as appropriate. Any corrective action and response implemented must be designed to ensure that the violation or problem does not re-occur (or reduce the likelihood that it will reoccur) and be based on an analysis of the root cause of the problem. If it appears that a larger, systemic problem may exist, then possible modification or improvement of the NYF's compliance, business, or billing practices will be considered. Possible changes or additions to procedures will be reviewed with the Compliance Committee, the Governance Committee, and, if necessary, with the Board of Trustees.

► **Element 8: Policy of Non-Intimidation and Non-Retaliation.**

- Intimidation and Retaliation Are Strictly Prohibited. We expect all employees and agents to comply with the Compliance Program, including reporting any violation or compliance issue to the their supervisor, the Compliance Officer or the Compliance Hotline. Retaliation and/or intimidation in any form against an individual who in good faith reports possible unethical or illegal conduct is strictly prohibited and is itself a serious violation of the Code of Conduct. Acts of retaliation and intimidation should be immediately reported to the Compliance Officer, and will be disciplined appropriately.

# APPENDIX

## FEDERAL & NEW YORK STATE STATUTES RELATING TO FALSE CLAIMS

Following is a brief summary of federal and New York State laws regarding false claims and whistleblower protections.

### I. FEDERAL LAWS

#### A. The Federal False Claims Act (31 U.S.C. §§ 3729-3733)

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

(1) (a) 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 subparagraphs (A), (B), (D), ... 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;... 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, 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;

(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.

\* \* \*

(d) Exclusion.

This section does not apply to claims, records, or statements made under the Internal Revenue Code of 1986.

While the FCA 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 FCA 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 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 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 health care facility that 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) of the FCA 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.

## **B. Administrative Remedies for False Claims (31 U.S.C. §§ 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 federal FCA, a violation of this law occurs when a false claim is submitted, not when it is paid. Also unlike the federal FCA, 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 health care 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.

**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 FCA. It imposes penalties and fines on 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 the person may not be entitled, and then uses false statements or records in order to retain the money.

The penalty for filing a false claim under the New York False Claims Act is \$6,000–\$12,000 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 New York False Claims 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.

**2. 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 New York State Department of Health may impose a civil penalty of up to \$10,000 per violation. If repeat violations occur within 5 years, a penalty up to \$30,000 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 § 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 six months if a first offense, for twelve months if a second offense (or if benefits wrongfully received are at least \$1,000 and no more than \$3,900), for eighteen months if a third offense (or if benefits wrongfully received are in excess of \$3,900), and five years for any subsequent occasion of any such offense.

**B. Criminal Laws**

**1. 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.

**2. 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 any 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. 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.

**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 it includes 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 primarily applies to claims for health insurance payments, including Medicaid, and contains five 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 material false information or omits material information for the purpose of requesting payment from a health plan. It 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 receiving more than \$3,000. It 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 \$10,000. It 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 \$50,000. It 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 \$1 million. It is a class B felony.

### **III. WHISTLEBLOWER PROTECTIONS**

#### **A. Federal False Claims Act (31 U.S.C. § 3730(h))**

The federal FCA 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.

#### **B. New York False Claims Act (State Finance Law § 191)**

The New York State False Claims Act also 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 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.

#### **C. 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.

**D. 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.

# ACKNOWLEDGMENT

I acknowledge that I have received The New York Foundling’s Commitment to Compliance Handbook containing the Code of Conduct, Compliance Program Structure and Guidelines, and a summary of federal and New York State laws regarding false claims and whistleblower protections.

I affirm the following:

- (1) I will follow the standards set forth in the Code of Conduct, the Compliance Program Structure and Guidelines, and applicable policies and procedures. I will ask questions if I do not understand my responsibilities under the Compliance Program.
  
- (2) If I become aware of any possible violations of the Compliance Program, or if I have concerns or questions about the appropriateness of any practices at the NYF I will report such issues to the Compliance Officer, my supervisor, or via the Compliance Hotline.

I understand that I may be subject to discipline or other corrective action, up to and including termination of employment or termination of contract, if I violate the standards and requirements set forth in the Code of Conduct, Compliance Structure and Guidelines or, any specific compliance policies or procedures.

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| Print Name |  |      |