



PROVIDER COMPLIANCE PROGRAM

July 2023

The New York Foundling Provider Compliance Program

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Overview

I. Purpose of the Compliance Program

The New York Foundling (“The Foundling”) Provider Compliance Program (the “Compliance Program”) is designed to promote The Foundling’s compliance with all applicable federal, state and local laws and regulations as well as government contracts and conditions of participation in public programs. The primary goals of the Compliance Program are to:

- Prevent fraud, waste, abuse and other improper activity while creating a culture of compliance within The Foundling;
- Detect any misconduct that may occur at an early stage before it creates a substantial risk of civil or criminal liability for The Foundling; and
- Respond swiftly to compliance problems through appropriate disciplinary and corrective action.

The Compliance Program reflects The Foundling’s commitment to operating in accordance not only with the strict requirements of the law, but also in a manner that is consistent with high ethical and professional standards. The Compliance Program applies to the full range of The Foundling’s activities.

All The Foundling employees and contractors have a personal obligation to assist in making the Compliance Program successful. Employees are expected to:

- Familiarize themselves with the Compliance Program’s policies and procedures;
- Review and understand the key policies governing their particular job functions;
- Report any fraud, abuse or other improper actions; and
- Carry out their jobs in a manner that demonstrates a commitment to honesty, integrity and compliance with the law.

The Compliance Program is regularly reassessed and is constantly evolving to address new compliance challenges and maximize the use of The Foundling’s resources. Employees are encouraged to provide input on how the Compliance Program might be expanded or improved.

II. Governing Law

Although the Compliance Program is generally intended to reduce, identify and redress compliance issues, it is specifically intended to address the compliance requirements set forth in the Federal False Claims Act as required by the Deficit Reduction Act of 2005, as well as the requirements set forth in New York State Social Services Law Section 363-d as required by Part 521 of New York State Codes, Rules and Regulations Title 18. The general subject matter and function of those laws are set forth below.

A. *Deficit Reduction Act of 2005 (Senate Bill S. 1932 § 6032, 42 U.S.C. § 1396a (a)(68))*

Section 6032 of the Deficit Reduction Act requires all entities receiving greater than \$5 million under a state Medicaid plan to establish written policies informing all employees, contractors and agents associated with the entity of the rights and remedies relating to false claims established under the False Claims Act, as well as criminal and civil liabilities for false claims and whistleblower protections relating to those claims established under state law for the purpose of preventing fraud, waste and abuse in health care programs. Furthermore, the entity's policies and procedures for ensuring compliance with the above requirements must be set forth in the entity's Employee Handbook. Finally, the compliance program must be certified annually with the Office of the Medicaid Inspector General.

B. *False Claims Act (31 U.S.C. §§ 3729 - 3733)*

The Federal False Claims Act ("FCA") is a law that imposes liability on persons and companies who knowingly receive unearned payments from or avoid payments due to the Federal government under governmental programs. "Knowing" is defined to include actions with deliberate ignorance or reckless disregard to a fact that would give rise to fraudulent action. An entity in violation may be subjected to treble damages (i.e. three times the amount of the false claims) and civil monetary penalties of up to \$11,000 per claim under the False Claims Act.

The FCA also contains a *qui tam* or whistleblower, provision that permits individuals with knowledge of false claims activity to file a lawsuit on behalf of the federal government. These individuals are referred to as "relators." The relator's lawsuit is filed under seal, which means it is kept confidential until the U.S. Justice Department reviews the case and decides whether to take over prosecution of the matter. An individual is considered a relator only if he or she is the "original source" of the report to the federal government. An individual is not the original source if the report involves activities that are already the subject of a government investigation or have previously been disclosed by the provider to the government. If a relator's lawsuit is successful, the relator may receive an award ranging from 15 to 30 percent of the government's recovery, plus reasonable expenses and attorneys' fees.

C. Anti-Kickback Statute

Under the Federal Anti-Kickback Statute, it is illegal for any employee or contractor to knowingly and willfully solicit, receive, offer or pay anything of value to another person in return for the referral of a client or in return for the purchasing, leasing, ordering or arranging for any item or service reimbursed by a federal health care program such as Medicaid or Medicare (42 U.S.C. § 1320a-7b). Penalties for violating the Anti-Kickback Statute include imprisonment, criminal fines, civil monetary penalties and exclusion from government health care programs. A similar New York law prohibits the exchange of remuneration for referrals for items or services covered by the state’s Medicaid program (N.Y. Social Services Law § 366-d).

D. New York State Codes, Rules and Regulations Title 18 Part 521 (18 NYCRR 521)

Part 521 requires that all entities receiving at least \$1,000,000 of annual revenue from state funded Medicaid programs create and implement an effective compliance program to ensure entity-wide compliance with the requirements of Section 363-d. At a minimum, the compliance program must address the following areas:

E. New York Social Services Law Section 363-d

Section 363-d recognizes that providers are in the best position to identify and resolve mistakes or fraud relating to billing activities in medical assistance programs. As such, this law requires entities to develop a compliance program to achieve that end. Such programs should address, but are not limited to, the following items:

- Policies and Procedures;
- Standards of Conduct;
- Governance;
- Compliance Officer;
- Compliance Committee;
- Quality of Care;
- Credentialing;
- Medical Necessity;
- Training and Education;
- Lines of Communication;
- Disciplinary Policies to Ensure Good Faith Participation;
- Auditing, Monitoring and Identification of Risk Areas;
- Risk Assessment;

- Reporting, investigation of fraud, waste, and abuse, and a Response Systems, including self-disclosure; and
- Whistleblower Protection.

Finally, Section 363-d requires an annual certification of the compliance program to Office of the Medicaid Inspector General.

F. *Other New York State False Statements and Claims Laws*

There are a number of New York State laws punishing the submission of false claims and the making of false statements:

- The New York False Claims Act, similar to the Federal False Claims Act, imposes fines and penalties upon individuals and entities who knowingly file false or fraudulent claims for payment from any state or local government. Individuals may file *qui tam* actions on behalf of the government, and may receive a fee ranging from 15-30% of the amount recovered. Finally, the New York False Claims Act also protects *qui tam* relators from retaliation by their employers.
- Section 145 of the Social Services Law makes it a misdemeanor for any individual to knowingly attempt to obtain payment under a Social Services program by means of any fraudulent scheme or device. Civil penalties for such actions include treble damages and a fine of up to thirty thousand dollars.
- Article 175 of the Penal Law makes it a misdemeanor to make or cause to make a false entry in a business record, improperly alter a business record, omit making a true entry in a business record when obligated to do so, prevent another person from making a true entry in a business record or cause another person to omit making a true entry in a business record. If the activity involves the commission of another crime it is punishable as a felony.
- Article 175 of the Penal Law also makes it a misdemeanor to knowingly file a false instrument with a government agency. If the instrument is filed with the intent to defraud the government, the activity is punishable as a felony.
- Article 176 of the Penal Law makes it a misdemeanor to commit a “fraudulent insurance act,” which is defined, among other things, as knowingly and with the intent to defraud, presenting or causing to be presented a false or misleading claim for payment to a public or private health plan. If the amount improperly received exceeds \$1,000, the crime is punishable as a felony.
- Article 177 of the Penal Law makes it a misdemeanor to engage in “health care fraud,” which is defined as knowingly and willfully providing false information to

a public or private health plan for the purpose of requesting payment to which the person is not entitled. If the amount improperly received from a single health plan in any one-year period exceeds \$3,000, the crime is punishable as a felony.

- Section 403 of the Insurance Law authorizes the Insurance Department to impose civil penalties for any action that constitutes a fraudulent insurance act under Article 176 of the Penal Law. Civil penalties may be up to \$5,000 plus the amount of the claim for each violation.
- Section 740 of the Labor Law prohibits an employer from taking any retaliatory action against an employee because the employee (i) discloses or threatens to disclose to a supervisor or government agency any illegal policy or practice of the employer that threatens public health or safety or constitutes health care fraud; (ii) provides information to or testifies before any government agency conducting an investigation into such a policy or practice; or (iii) objects to or refuses to participate in any such policy or practice. However, retaliatory action is prohibited only if the employee, prior to providing information to a government agency, notifies their supervisor of the illegal policy or practice and affords the employer a reasonable opportunity to correct the problem. An employee subject to illegal retaliation may file a civil action against the employer and is entitled to reinstatement, lost wages and attorneys' fees.
- Section 741 of the Labor law provides protection for whistleblowers who notify the government in good faith that the employer's actions constitute improper quality of patient care. The employee is only protected if he or she first presented the issue to their immediate supervisor and allowed an opportunity for correction. Employees suffering from retaliatory action may be entitled to reinstatement, back pay and attorneys' fees.

Elements of the Compliance Program

The Compliance Program’s design is based on compliance guidance provided by the U.S. Department of Health and Human Services Office of Inspector General and the requirements imposed on health care providers under the Deficit Reduction Act as well as Section 363-d of the New York Social Services Law. The key elements of the Compliance Program are discussed in greater detail in the Compliance Program sections referenced below.

I. Policies and Procedures

The policies and procedures set forth should serve as a Code of Conduct for all employees, contractors and agents associated with The Foundling. The Code of Conduct sets forth the basic principles that guide The Foundling decisions and actions. All employees, contractors and agents are expected to familiarize themselves with the Code and should rely on the standards contained in the Code of Conduct in carrying out their duties.

The Code of Conduct is not intended to address every potential compliance issue that may arise in the course of The Foundling’s business. Employees, contractors, and agents should read the Employee Handbook as well as consult with their supervisors for additional policies relating to compliance. Employees are required to review and carry out their duties in accordance with the policies applicable to their job functions. The Code of Conduct’s standards are set forth below. The policies and procedures set forth below are available, accessible, and applicable to all employees, contractors, and agents of The Foundling, and other potential affected individuals.

A. Equal Opportunity

The Foundling has adopted a Non-Discrimination Policy that can be found in the Employee Handbook as well as in The Foundling Organization Manual. All employees are expected to familiarize themselves with that policy as well as the policies stated herein. It is the policy of The Foundling to ensure equal employment opportunity without discrimination or harassment on the basis of race, color, national origin, religion, sex, age, disability, citizenship, marital status, sexual orientation or any other characteristic protected by law. The Foundling prohibits, and has a zero tolerance for, any form of discrimination or harassment.

The Foundling complies with all applicable federal, state, and New York City laws. Employees, officers, directors, and all other personnel associated with The Foundling should familiarize themselves with and are responsible for the full non-discrimination policy found in the Employee Handbook.

The Foundling provides equal opportunities to all qualified employees and applicants in accordance with New York State’s Department of Labor’s Equal Opportunity requirements. Our treatment of all employees and applicants for employment at The Foundling shall be without unlawful discrimination as to race, creed, color, national origin, sex (including pregnancy, childbirth, and related medical conditions), marital status, age, disability, sexual orientation or citizenship status in all employment decisions including, but not limited to, recruitment, hiring, compensation, training and apprenticeship, promotion, upgrading, demotion, downgrading, transfer, layoff and termination, and all other terms and conditions of employment except as provided by law. The Foundling complies with all applicable Federal, State and New York City Laws.

Any employee requiring a reasonable accommodation in order to perform their job is expected to contact their immediate supervisor or the Human Resources Department.

B. Employee Screening

i. Background Checks

The Foundling has adopted an Employment Eligibility Policy that can be found in the Employee Handbook as well as in The Foundling Organization Manual. All employees are expected to familiarize themselves with that policy as well as the policies stated herein. The Foundling is committed to employing individuals who meet the highest standards of integrity and professionalism. The Foundling conducts reference checks on all prospective employees, volunteers and specified consultants with significant client/consumer contact, including verification of employment history and education. In addition, all employees are subject to clearance through the State Central Registry of Child Abuse and the Sexual Offenders Registry. Employees must also provide three personal written references.

Any offer of employment is contingent upon receiving satisfactory references and a status of good standing with applicable regulatory bodies. Falsification or omission of relevant information in connection with an application for employment is grounds for job denial or dismissal.

Screening for all positions will also include a search for criminal convictions as described below.

ii. Fingerprinting Policy

The Foundling fingerprints potential employees, volunteers, and specified consultants with significant client/consumer contact in order to safeguard clients. Although New York State

encourages the employment of persons previously convicted of crimes, a person will not be allowed to represent The Foundling if such a person presents a risk to the safety and well-being of a client or any other person. Fingerprinting will be done as part of the new hire process for all potential employees to determine possible criminal history.

The following list includes the crimes which The Foundling considers to be job-related or indicate an unreasonable risk to The Foundling clients. The Chief Compliance Officer, in consultation with the Foundling's legal counsel determine if an offense is considered an unreasonable risk. Crimes include, but are not limited to:

- Abandonment of a child
- Assault
- Criminal possession of a controlled substance as a felony
- Criminal possession of a weapon as a felony
- Criminal sale of a controlled substance as a felony
- Criminal sale of marijuana as a felony
- Disseminating indecent materials to minors
- Endangering the welfare of a child
- Homicide
- Kidnapping
- Promoting prostitution as a felony
- Promoting sexual performance by a child
- Robbery
- Sex offenses

Information pertaining to criminal history is requested on all applications. If an applicant intentionally omits or provides false information on the application, this may be grounds for immediate termination or refusal to hire.

Applicants may not begin employment prior to the Agency's receipt of the results of the criminal history check. When a background check reveals criminal history, HR representative or designee informs the Hiring Manager. HR discusses the findings with the applicant or employee. The following topics will be covered:

- The nature of the incident(s) which resulted in the criminal conviction. The employee may be requested to give the Agency a certified copy of the conviction or disposition containing a court seal within 5 business days.
- The sentencing or penalties imposed as a result of the conviction.
- The length of time which has elapsed since the conviction.

- What the person has done since the conviction to demonstrate that rehabilitation is evident.
- The relationship of the criminal conviction to the individual’s job responsibilities.
- The age of the individual at the time of the offense.
- The nature and seriousness of the offense.
- Any information produced by the individual on their behalf.
- The legitimate interest of The Foundling to protect its clients.

Those who wishes to retain an employee or hire an applicant with a criminal history will submit a written statement to the HR. This statement must indicate why the believes the conviction record should not result in termination or refusal to hire.

If a decision is made to deny or terminate employment due to a past criminal history, the HR or designee will provide a written statement setting forth the reasons within 30 days of the decision. This is only necessary if the reason for denial of employment or termination is based solely on the criminal record.

All information regarding an individual’s criminal conviction record will be maintained in a secure manner. Such information shall not be made public and shall only be shared with the individual it relates to and those involved in the decision-making process concerning the employee’s/applicant’s fitness for employment. The safety and well-being of its clients and consumers is The Foundling’s primary concern.

iii. Licensure and Certification

We require all employees whose jobs require a professional license or certificate to provide proof of licensure or certification. Licensure and certification are subject to verification. Employees are responsible for obtaining and maintaining required licensure or certification at their own expense. Renewal licensure and certification should be submitted to Human Resources on the renewal date.

iv. Proof of Eligibility to Work

All New York Foundling employees are required to provide proof of eligibility to work in the United States as required by law. Employees whose employment authorization is restricted or limited in any manner are responsible for maintaining their authorization and are expected to inform the Human Resources Department of any changes in their employment authorization status.

v. Exclusions

All employment application forms, including contractors, subcontractors, agents, and independent contractors, will require applicants for employment to indicate whether they have been excluded from participation in the Medicare or Medicaid program or otherwise debarred by a federal health care program. Applicants will certify on such forms that the information they have provided regarding such exclusions is accurate and complete.

The Vice President of Human Resources, or designee, will screen all final candidates for employment against the U.S. Department of Health and Human Services Office of Inspector General List of Excluded Individuals/Entities (“LEIE”) and the U.S. General Services Administration. The Foundling is prohibited from offering employment to any individual who is included on the LEIE or at the time of such offer.

Upon receipt of notification from the U.S. Department of Health and Human Services Office of Inspector General that an employee has been excluded from a federal health care program, The Foundling will promptly terminate the employee’s employment. If any employee obtains information indicating that another employee is subject to such exclusion, the employee who obtained such information will promptly notify the Chief Compliance Officer, who will be responsible for investigating the matter.

C. *Contractor Selection*

The Foundling is prohibited from entering into a contract unless the contractor has been subject to screening and has been checked against the Exclusion list in accordance with the screening policies mentioned above.

Upon completion of all contract negotiations and prior to execution of the contract, the employee responsible for negotiating the contract will use best efforts to conduct a reference check to determine whether the contractor is reputable and trustworthy. In addition to inquiring about the general performance of the contractor, the employee will seek to confirm that the contractor has not engaged in any fraudulent, abusive or improper conduct in connection with other contracts. Any evidence of such conduct will preclude The Foundling from entering into a contract with the contractor absent the express approval of the Chief Compliance Officer. A reference check may be waived for a start-up company without sufficient prior experience or in other unusual circumstances.

i. Required Contract Provisions

Every contract entered into by The Foundling must contain certain standard provisions designed to ensure that The Foundling does not do business with contractors that have engaged in fraud, abuse or other improper activity. These standard provisions include the following:

- The contractor is not included on the Exclusion list and has not been convicted of a crime relating to the provision of or billing for health care services;
- The contractor will promptly notify The Foundling if any of the above representations cease to be true during the term of the contract;
- The contractor will adhere to the applicable provisions of The Foundling's compliance program, which will be made available to the contractor;
- The contractor will not subcontract with any persons or entities included on the Exclusion list and will terminate any subcontractors that engage in fraudulent or other illegal activity;
- The contractor will promptly notify The Foundling of any fraud, abuse or other improper activity of which it becomes aware that relates to the operation of The Foundling or the services provided to The Foundling by the contractor or any subcontractors;
- The contractor will promptly notify The Foundling of any government audit, inquiry or investigation of which it becomes aware that relates to The Foundling or the services provided to The Foundling by the contractor or any subcontractors;
- The contractor and its subcontractors will make their employees available for interviews or other proceedings at the request of government investigative agencies upon request; and
- The Foundling may terminate the contract in the event the contractor becomes an excluded person or engages in any fraud or other illegal activity.

The above list may be expanded by the Chief Compliance Officer or Legal Counsel. None of the above provisions may be excluded from a contract or modified without the prior approval of the Chief Compliance Officer.

ii. Legal Review

All contracts will be subject to review by the Legal Counsel or their designee, who will be responsible for ensuring that all provisions required by this policy have been included and that the contract otherwise complies with applicable law. The Legal Counsel or their designee will maintain a database of all The Foundling contracts for tracking and monitoring purposes.

iii. Termination of Contractors

Employees will promptly notify the Chief Compliance Officer if they become aware of any suspected fraudulent, abusive or other illegal conduct by a contractor. The Chief Compliance Officer, in coordination with other appropriate personnel, will investigate the matter and determine whether the contractor has engaged in improper conduct. The Foundling will promptly terminate the contract of any contractor that has been found to have engaged in fraudulent, abusive or other illegal activity.

iv. Record Retention

The Chief Compliance Officer will ensure that all records relating to the implementation of this policy including, but not limited to, documents evidencing the screening, supervision and termination of contractors, are maintained for seven years.

D. *Proper Billing for Services*

The Foundling has adopted a Financial Accountability Policy that can be found in The Foundling Organization Manual. All employees are expected to familiarize themselves with that policy as well as the policies stated herein.

The Foundling obtains reimbursement from government programs such as Medicaid and Medicare for health care services provided to its clients. The Foundling also receives payment from state and local government agencies for the provision of other items and services. The submission of accurate bills to government payers is one of The Foundling's key legal obligations.

All employees involved in documenting and billing the government for health care or other services must ensure that they follow all applicable laws, rules, conditions of participation, and interpretive guidance relating to the billing process. Among other things, employees must ensure that The Foundling does not:

- Bill for clients not actually served by The Foundling;
- Bill twice for the same service;
- Bill at a rate in excess of the rate permitted under the applicable program;
- Bill for services the employee knows are also being billed to the government by another health care provider; or
- Bill the Medicaid program as the primary payer when the client has other public or private health insurance coverage.
- Bill for services that are not deemed medically necessary.

It is critical that all health care and social services rendered to clients are appropriately documented in The Foundling's records. Such documentation is necessary to ensure that The Foundling can demonstrate that it has delivered such services in the event of a government audit or investigation. Detailed instructions regarding documentation and reporting policies may be found in The Foundling's Policies and Procedures Manual.

The failure of an employee to adhere to all applicable billing rules may subject The Foundling to substantial liability. Among other things, it is a violation of the False Claims Act to knowingly submit a false or fraudulent claim for payment to a federal program such as Medicaid or Medicare. The Foundling may be subjected to treble damages (i.e. three times the amount of the false claims) and civil monetary penalties of up to \$11,000 per claim under the False Claims Act. Other state and federal laws impose civil and criminal penalties on The Foundling and its employees for improper billing activity.

If The Foundling retains a vendor to submit bills on its behalf, The Foundling may still be responsible for improper billing activity by the vendor. Accordingly, employees involved in delegating this function must provide clear direction to vendors on proper billing procedures and carefully monitor their performance.

E. Providing Access to Necessary Services

The Foundling is committed to ensuring that all clients under its care receive prompt access to the full range of medically necessary health care services and clinically appropriate social services to which the client is entitled under the applicable government program. All services must be ordered and/or delivered by appropriately licensed or qualified personnel. The Foundling seeks to provide or arrange for high-quality care at all times.

Under certain government programs, The Foundling may receive a fixed per diem rate that covers a specified range of services that may be needed by a client. It is particularly important in these programs that employees not restrict a client's access to necessary health care or social services to which the client is legally entitled. Any such restrictions are not only unethical, but they may also subject The Foundling to liability under the False Claims Act and other laws.

F. Submitting Complete and Accurate Reports to Government Agencies

Under certain programs, The Foundling's reimbursement from the government may be based in whole or in part on The Foundling's costs. In these programs, The Foundling is usually required to submit regular cost reports, which are used by the government for rate-setting purposes. All employees involved in the process of preparing and submitting cost reports must strive to ensure that these reports are accurate and complete. Expenses reflected on cost reports must have been actually incurred and properly allocated in accordance with program guidelines. The same standards of accuracy and completeness apply to any other reports or data regarding The Foundling's operations submitted to government agencies or private funding sources.

G. Avoiding Kickbacks and Referral Fees

The Foundling has adopted an Employee Referrals and Gift Giving Policy that can be found in the Employee Handbook as well as in The Foundling Organization Manual. All employees are expected to familiarize themselves with that policy as well as the policies stated herein.

i. Referrals

Staff is prohibited from steering or directing referrals of applicants or persons served to a private practice in which professional staff, consultants, or their immediate families may be engaged. Staff is also prohibited from accepting payment or other consideration from another provider of services for referring applicants, and is prohibited from making payment for referrals to the agency. As appropriate, and with approval, staff may refer clients to nonprofit entities where they may also be employed.

ii. Gift Giving

New York Foundling staff must not give or receive any inappropriate gifts. Monetary gifts and gifts in the form of performing service or giving special consideration are unacceptable. For clinical programs, gestures of appreciation by the client or staff should always be discussed with the treatment team. Staff who take clients on outings, e.g. parks, restaurant, etc., must assure the safety and protection of clients, must do so within the scope of the service plan, and must ensure that all such outings be discussed and documented. In non-clinical programs such issues should be discussed with supervisory staff and receive approval prior to any event.

The list above is in addition to or in further explanation of, but not a substitute for, ethical standards of professional societies and organizations, Federal Laws, New York State Laws, and New York Foundling policies.

In accordance with the previously mentioned statutes, employees are prohibited from offering or paying anything of value, whether in cash or in kind, to another party in return for the referral of a client to The Foundling. Likewise, employees are prohibited from soliciting or receiving anything of value, whether in cash or in kind, from another party in return for the referral of a client by The Foundling to another health care provider.

H. Conflicts of Interest

i. Conflicts Policy

The Foundling has adopted an Employee Conflicts of Interest Policy that can be found in the Employee Handbook as well as in The Foundling Organization Manual, which contains standards and procedures for avoiding conflicts of interest. All employees are expected to familiarize themselves with that policy as well as the policies stated herein.

The Foundling adheres to the highest standards of ethical conduct in the governance of operations to ensure that its trustees, officers, directors, and all other personnel and paid consultants do not have or give the appearance of conflicts of interest and do not use their relationship with The Foundling for personal gain.

The trustees, officers, directors, and all other personnel and paid consultants of The Foundling are under a duty to perform their services within the highest standards of ethical conduct. A conflict of interest exists when a trustee, officer, director, other employee or paid consultants of The Foundling is in a position to profit directly or indirectly through the use of their position or knowledge.

A conflict of interest would ordinarily arise when a duty is owed to an organization which may be in competition with The Foundling. Since The Foundling is a non-profit, voluntary organization, such conflict is remote, if existing at all. A The Foundling trustee can, therefore, be a trustee or officer of a similar organization without a conflict of interest.

A conflict of interest may arise when a trustee, officer or director of The Foundling is affiliated by employment, position or investment with an organization that does business with The Foundling. It is also acknowledged that the contracts with the City of New York, surrounding counties and agencies of New York State prohibit certain conduct as representing a conflict of interest.

To avoid said conflicts or even the appearance of a conflict of interest, the following guidelines must be adhered to:

- The Foundling’s employees and paid consultants shall not have a direct or indirect personal financial interest in the organization’s:
 - Assets,
 - Leases,
 - Business transactions, or
 - Professional Services.
- The Foundling shall not enter into any contract or transaction, direct or indirect, with an employee for the purchase of supplies, materials or equipment.
- The Board of Trustees shall govern and manage the general business of The Foundling, carry out the purposes and mission of The Foundling and promote its best interests. The trustees may delegate duties but must remain accountable to The Foundling for the mandated duties and responsibilities as set forth in the by-laws and New York statutes.
- In carrying out its responsibilities, the trustees must adhere to the following standards of conduct:
 - The Foundling must obtain the approval of the City of New York before entering into any contract or transaction, direct or indirect, with a trustee, a partnership in which the trustee is a member or a corporation in which the trustee holds ten percent of the outstanding stock.
 - Any trustee who has entered in a contract with The Foundling or who is involved in its business transactions or professional services must disclose this relationship to all other trustees and may not participate in any vote taken with respect to such transactions or services.
 - Any real estate transaction with a trustee, direct or indirect, related to clients placed through the New York State Office for People with Developmental Disabilities (“OPWDD”) must be disclosed to OPWDD.
 - In order to assist the trustees to identify any matters that require disclosure and approval, the following shall be provided to the Board of Trustees on an annual basis:
 - A list of The Foundling suppliers whose annual volume exceeds \$20,000 and
 - A list of all individuals and companies that provide services in excess of \$20,000.
 - After any required disclosure is made and necessary approvals obtained, a trustee may accept compensation for services rendered to an entity that does business with The Foundling provided the trustee’s responsibility to The Foundling is not compromised.

- The Foundling employees and members of their immediate families may not serve on:
 - The Foundling Board of Trustees or
 - Any committee with authority to order personnel actions affecting their job.
- No person may hold a job or position over which a member of their immediate family exercises any supervisory, managerial or other authority whatsoever, whether such authority is reflected in a job title or otherwise, unless such job or position is voluntary and unpaid. A member of immediate family includes parent, spouse, child, father-in-law, mother-in-law, son-in-law, daughter-in-law, niece, nephew, aunt, uncle, cousin and separated spouse. For the purposes of this section, a trustee is deemed to exercise authority over all employees. This provision shall not apply to a situation in which both the supervisor and the person supervised are child care workers employed in the same group residential facility.
- The Foundling trustees, officers and directors shall not, directly or indirectly, accept gifts, whether in the form of money, services or travel from any organization doing business with The Foundling under circumstances in which it could be inferred that the gift was intended to influence the officer, director or trustee in the performance of their duties. This does not include the acceptance of items of minimal value (under \$100.00) that are clearly tokens of respect or friendship.
- The Foundling trustees, officers and directors shall not disclose confidential information acquired by them in the course of their duties or use such information to further their personal interests.
- The Foundling officers, directors and trustees shall conduct their professional careers to assure the best interests of The Foundling without any implication of wrongdoing. If a conflict of interest does arise or can be reasonably construed, said officers, directors and trustees shall refrain from participation in decision-making. Minutes of meeting should reflect any disclosure of conflict of interest, abstention from voting and the quorum situation. Disclosure does not prevent an individual from stating their position in a matter or responding to pertinent questions posed by others since one's knowledge of an issue may be of great assistance. In the event that there must be a decision regarding the resolution of a conflict, the matter will be referred to the Executive Committee of the Board of Trustees for such decision.
- No loans shall be made to The Foundling officers, directors or trustees or to any other corporation, firm, association or other entity in which one or more of its

officers, directors or trustees are also The Foundling officers, directors or trustees, except a loan to another charitable corporation.

The varied interests and backgrounds of the trustees, officers and directors may result in a dual interest that might be interpreted as a conflict of interest. In order to avoid the possibility of a conflict, The Foundling shall reaffirm each Trustee's commitment to the conflict of interest policy at the annual Board of Trustees meeting by board resolution. Any Trustee who identifies a conflict of interest will be required to report the conflict to the Board President who will review the disclosure with the Governance Committee.

In order to avoid the possibility of a conflict of interest amongst The Foundling directors, an Annual Statement of Disclosure, to coincide with the Annual Board of Trustees' meeting, is required from the New York Foundling's leadership.

The completed Statements of Disclosure filed in the executive office and will be produced upon demand.

ii. Conflict Disclosure Procedures

Upon or before hiring or an appointment, employees must complete the Statement of Disclosure form. This written disclosure will be kept on file and must be updated as appropriate. In the course of meetings or activities, an employee is required to disclose any interests in a transaction or decision where they (including their business or other nonprofit affiliations), their family and/or significant other, employer or close associate will receive a benefit or gain. After disclosure, the employee understands that he or she will be asked to leave the room for the discussion and will not be permitted to vote on the question.

The Foundling reaffirms each trustee's commitment to the conflict of interest policy at the annual Board of Trustees' meeting by board resolution. Any Trustee who identifies a conflict of interest is required to report the conflict to the Board President who reviews the disclosure with the Governance Committee.

Directors and all key personnel are also required to execute the Annual Statement of Disclosure form to coincide with the Annual Board of Trustees' meeting.

If a conflict of interest arises or can be reasonably construed, the trustees, officers and directors shall refrain from participating in the decision making, in the event that there must be a decision regarding the conflict, the matter is referred to the Executive Committee of the Board of Trustees for a decision.

The completed Statements of Disclosure filed in the executive office and will be produced upon demand.

I. Using The Foundling Resources Exclusively for The Foundling Business

Employees may use The Foundling resources solely for the purpose of carrying out their job responsibilities. The Foundling's facilities, equipment, staff and other assets may not be used by an employee for personal benefit or to engage in any outside business or volunteer activity without the prior approval of the Chief Compliance Officer. Employees may not use their affiliation with The Foundling to promote any business, charity or political cause. Employees shall seek reimbursement for expenses only to the extent such expenses have been incurred in the course of carrying out their job duties and in accordance with The Foundling's expense reimbursement policies.

J. Using The Foundling Resources Exclusively for Charitable Purposes

The Foundling is a nonprofit organization under Section 805 of the New York Nonprofit Corporation Law. This status generally requires The Foundling to engage in only those activities that are within its approved charitable purpose. The Foundling's primary charitable purposes are the care of foster children, preventative and protective services, and services for people with developmental disabilities. Employees may not use The Foundling's resources to engage in any business activity, even if for The Foundling's benefit, that is outside the scope of The Foundling's charitable purpose without the approval of the Chief Compliance Officer.

K. Confidentiality of Client Records

The Foundling has adopted Confidentiality Policy that can be found in the Employee Handbook and in The Foundling Organization Manual. All employees are expected to familiarize themselves with that policy as well as the policies stated herein. Staff shall respect a client's right to privacy and shall protect the confidentiality of all information obtained in the course of professional service. Staff shall inform clients about the manner in which client identifiable information is retained and the circumstances under which it can be disclosed. New York Foundling staff shall also respect and protect the rights of clients, of colleagues, and of other staff, and shall safeguard client confidences within the constraints of applicable law and regulations.

L. *Government Audits and Investigations*

Employees and contractors are expected to fully cooperate in all government audits and investigations. Any employee who fails to provide such cooperation will be subject to termination of employment.

All subpoenas and other governmental requests for The Foundling documents should follow the Foundling’s Subpoena Policy protocol. Employees are strictly prohibited from destroying, improperly modifying or otherwise making inaccessible any documents that the employee knows are the subject of a pending government subpoena or document request. Employees are also barred from directing or encouraging another person to take such action. These obligations override any document destruction policies that would otherwise be applicable.

If an employee receives a request from a government investigator to provide an interview, the Foundling’s Records Request protocol is to be followed. Employees are expected to answer all questions posed by government investigators truthfully and completely.

II. **Compliance Oversight Personnel**

A. *Chief Compliance Officer*

The Chief Compliance Officer is responsible for overseeing the implementation, maintenance and modification of the Compliance Program. The Chief Compliance Officer’s chief duties include, but are not limited to, the following:

- Developing policies and procedures governing the operation of the Compliance Program;
- Managing day-to-day operation of the Compliance Program;
- Reporting directly to the Board President if the Chief Compliance Officer believes that the Chief Executive Officer is complicit in any fraud, waste, or abuse investigation;
- Being granted access to any and all documents requested in the course of an investigation or inquiry;
- Periodically reviewing and updating the Code of Conduct and related policies;
- Collaborating with other departments to ensure coordinated compliance with the Compliance Program;
- Overseeing operation of the “Hotline”;
- Receiving, evaluating, investigating and remediating compliance-related complaints, concerns and problems;

- Ensuring proper reporting of violations to duly authorized enforcement agencies as appropriate or required;
- Working with the Human Resources Department and others as appropriate to develop the compliance training program;
- Regularly evaluating the effectiveness of and strengthening the Compliance Program, as well as overseeing the internal auditing plan; and
- Reporting to the Board of directors on a regular basis regarding violations and the effectiveness of the Compliance Program.

Employees and contractors should view the Chief Compliance Officer as a resource to answer questions and address concerns related to the Compliance Program or compliance issues. The Chief Compliance Officer maintains an “open door” policy and may be contacted directly by any employee or contractor regarding a compliance-related matter.

The Chief Compliance Officer reports directly to the Chief Executive Officer or a designee in the absence of the Chief Executive Officer. The Chief Compliance Officer also makes regular reports to the Compliance Committee on the operation of the program. The Chief Compliance Officer is authorized to implement all necessary actions to achieve the objectives of the Compliance Program. This includes the authority to review all documents and other information relevant to compliance activities. The Chief Compliance Officer also has the authority to review contracts and financial documents that may implicate state and federal anti-kickback statutes as well as other applicable laws, seeking the advice of counsel where appropriate.

To be eligible, the Chief Compliance Officer must have a Bachelor’s Degree, with a Master’s Degree or other advanced degree being preferred. The Chief Compliance Officer must also have a minimum of ten years of experience working in a health care organization, a social services organization or the compliance department of an organization in another industry. The Chief Compliance Officer may be assisted by Compliance Director or other qualified subordinates. The Compliance Officer may delegate certain day-to-day Compliance Program responsibilities to these individuals.

B. Compliance Committee

The Compliance Committee is comprised of the Chief Compliance Officer and other employees designated by the Chief Executive Officer. The Chief Executive Officer seeks to appoint members to the Compliance Committee with varying backgrounds and experience to ensure that the Compliance Committee has the expertise to handle the full range of clinical, administrative, operational, and legal issues relevant to the program. The Compliance

Committee is chaired by the Chief Compliance Officer and meets no less than annually. The Compliance Committee’s functions include, but are not limited to, the following:

- Coordinating with the Compliance Officer to ensure that the written policies and procedures and required standards of conduct are current, accurate, and complete, and that the required training topics are completed timely;
- Coordinating with the Compliance Officer to ensure communication and cooperation by affected individuals on compliance-related issues, internal or external audits, or any other function or activity required in the regulations;
- Ensuring that the Compliance Officer is allocated sufficient funding, resources, and staff to fully perform their responsibilities;
- Ensuring that effective systems and processes are in place to identify Compliance Program risks, overpayments, and other issues, and effective policies and procedures for correcting and reporting such issues; and
- Enacting required modifications to the Compliance Program.

C. Board of Directors

The Board of Directors has ultimate authority for the governance of The Foundling, including oversight of The Foundling’s compliance with applicable law. This responsibility includes overseeing the activities of the Chief Compliance Officer and Compliance Committee as well as the general operation of the Compliance Program.

The Chief Compliance Officer submits reports on the operation of the Compliance Program to the Board of Directors at least annually. The Chief Compliance Officer has the right to bring matters directly to the Board of Directors’ attention at any time.

III. Training and Education

Detailed information regarding The Foundling’s orientation program can be found in the Employee Handbook as well as in the Staff Training, Development & Supervision Policy found in The Foundling Organization Manual. All employees are expected to familiarize themselves with that policy as well as the policies stated herein.

The Foundling orients all New York Foundling staff and volunteers to our mission, objectives, policies, services and resources. The Human Resources Department, the Training and Staff Development Department, as well as program staff perform this orientation collectively.

Newly hired staff are expected to attend agency-wide orientation prior to their first day of employment with the agency and job specific orientation within the first 30 days of

employment (see training catalog for specific orientation checklists). Staff members with direct care responsibilities are required to complete job-specific orientation before they work directly with clients/consumers. Employee attendance at orientation is documented.

The Human Resources Department schedules new staff to attend the agency-wide orientation. The orientation is delivered by the Human Resources Department and the Training and Staff Development Department and provides new staff with the history, mission, philosophy and goals of New York Foundling. Employees will learn about the agency's services, employee benefits, policies and procedures, the cultural and socioeconomic characteristics of the service population, the relationship of New York Foundling with other community resources, and the goals of the agency's continuous quality improvement process.

A. *Basic Compliance Training*

Every employee must attend the basic compliance training session offered by The Foundling within thirty days of the commencement of employment. The curriculum for basic compliance training will be developed and updated as necessary by the Chief Compliance Officer in consultation with the Vice President of Human Resources, the Legal Counsel and others deemed appropriate by the Chief Compliance Officer. The curriculum will be designed to provide employees with an overview of key compliance issues faced by The Foundling. The topics covered by basic compliance training will include, but not be limited to, the following:

- Improper or fraudulent billing for health care services;
- Preparation of inaccurate or incomplete cost reports;
- Payment or receipt of kickbacks in return for client referrals and the misuse of The Foundling funds;
- The policies and procedures of The Foundling on confidentiality;
- The legal rights of program clients and consumers and the responsibility to abide by organizational and professional ethics; and
- Proper channels for reporting and redressing compliance violations.

Basic compliance training will also provide guidance on the FCA, including the type of conduct prohibited by the FCA, the penalties for FCA violations, the FCA's *qui tam* provisions and the prohibition on retaliation against employees. This training will also cover New York State laws that impose criminal penalties for making false claims or statements. In addition, employees will be advised of their obligation to report suspected fraud or abuse, the opportunity for anonymous reporting through The Foundling's Hotline or email and the prohibition on retaliation against employees for making reports in good faith.

As part of basic compliance training, each employee will receive a copy of The Foundling's Employee Handbook and Compliance Program. The Chief Compliance Officer will determine the format of basic compliance training and is authorized to retain outside vendors to provide training components. The Chief Compliance Officer will keep records for no less than seven years of all basic compliance training programs.

By signing the Compliance Training Acknowledgement employees acknowledge that they have received the training. Records of such written acknowledgements are kept by the Chief Compliance Officer for no less than seven years. Employees must also attend annual refresher training sessions. Employees are required to participate in any advanced compliance training sessions organized by their department, which are designed to focus on the specific compliance issues associated with the department's functions.

B. Annual Refresher Training

The Chief Compliance Officer will prepare an annual refresher compliance training program, which will reinforce the key principles covered by basic compliance training and summarize any changes in The Foundling's Employee Handbook or Compliance Program during the prior year. All persons associated with The Foundling will be required to attend an annual refresher training session.

C. Chief Compliance Officer Training

The Foundling will ensure that the Chief Compliance Officer has sufficient opportunities to receive training on compliance issues through attendance at outside conferences, subscription to trade periodicals and other means.

D. Bulletins and Updates

The Chief Compliance Officer will be responsible, on a periodic basis, for preparing and distributing to relevant employees' bulletins and updates addressing new fraud and abuse or other compliance issues of which the Chief Compliance Officer becomes aware. These bulletins and updates will cover, among other things, changes in government contracts, new interpretations of existing laws or rules, revisions to The Foundling policies or procedures and industry trends or developments. Department directors will notify the Chief Compliance Officer of any significant matters they deem appropriate for inclusion in such bulletins and updates.

IV. Communication of Violations

Reporting Responsibilities

It is the responsibility of all employees to report observed or suspected fraud, abuse or other improper activity relating to the operation of The Foundling. For purposes of this policy, “fraud” means any type of intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or herself, to The Foundling or to any other person. “Abuse” means practices that are inconsistent with sound fiscal, business or medical practices and result in an unnecessary cost to the state or federal government or The Foundling or in reimbursement of services that are not medically necessary or fail to meet professionally recognized standards for health care. Fraud or abuse may be committed by The Foundling employees, contractors, clients or others.

Examples of the types of activity that must be reported by employees include, but are not limited to, the following:

- Billing Medicaid or other third-party payers for clients to whom The Foundling has not rendered services;
- Inflating or otherwise misrepresenting The Foundling’s costs on cost reports filed with government agencies or private funders;
- Intentionally denying or restricting access to medically necessary health care services for which The Foundling is responsible;
- Participating in an arrangement under which other health care providers bill Medicaid on a fee-for-service or other basis for health care services for which The Foundling has been reimbursed through its per diem rate;
- Billing Medicaid for services rendered to a client if the employee is aware that the client or their family has obtained Medicaid coverage fraudulently;
- Submitting of inaccurate or misleading data or reports to government agencies;
- Theft or other misuse of The Foundling funds or property by employees or contractors;
- Violations of The Foundling compliance policies or other guidance; and
- Violations of laws, regulations or government contracts.

A. Reporting Mechanisms

The Foundling Employees have several options for reporting fraudulent, abusive or other improper conduct. The Foundling maintains open lines of communication for the reporting of

suspected improper activity. These reports can be made anonymously. Employees are expected to promptly report any such activity of which they become aware in one of the following ways:

- Notifying their supervisor;
- Notifying the Chief Compliance Officer;
- Notifying any other member of the Compliance Committee with whom they feel comfortable; or
- Filing a report through the Compliance Hotline

The Compliance Hotline can be accessed by dialing 1-877-368-6354. Additionally, those who wish to file a report may do so by filing a complaint in the Concern Box located at each The Foundling location. To encourage full and frank reporting of suspected fraud or abuse, The Foundling gives employees the option of filing complaints through the Compliance or Concern Line or Concern Box anonymously. The Chief Compliance Officer is responsible for reviewing all Compliance Hotline, Concern Line, and Concern Box reports, assessing whether they warrant further investigation, and ensuring that any compliance problems are identified and corrected.

Additionally, as previously mentioned, employees have the legal right to file *qui tam* lawsuits under seal if they become aware that The Foundling has submitted claims for reimbursement to Medicaid or other government programs in violation of the FCA. Employees may not be retaliated against for filing such a lawsuit. Employees will be advised of this right through The Foundling's compliance training program and Employee Handbook, but will be encouraged to report and attempt to resolve compliance concerns through the internal procedures described in this policy.

V. Disciplinary Policies to Ensure Good Faith Participation

The Foundling has adopted an Incident Management Policy that can be found in The Foundling Organization Manual. All employees are expected to familiarize themselves with that policy as well as the policies stated herein.

A. Corrective Action

It is a policy of The Foundling to follow progressive steps when disciplinary action is initiated and to provide the employee adequate warning of the seriousness of the problem and its possible consequences.

The Foundling resolves:

- To take disciplinary action against an employee after full investigation;

- That progressive discipline shall be employed whenever appropriate; and
- To discipline employees in a uniform, consistent and nondiscriminatory manner.

Supervisory and management personnel are responsible for:

- Developing and applying reasonable performance standards;
- Ensuring that personnel reporting to them are knowledgeable regarding pertinent rules, regulations and performance standards; and
- Acting in a prompt, appropriate, and consistent manner when rules and regulations are violated or work performance is below an acceptable level.

The Human Resources Department is responsible for giving advice and direction to supervisors and management personnel in the pursuit of disciplinary action. The Human Resources Department ensures the publication and communication of rules concerning employee conduct in the workplace and implementation of this policy in a prompt, appropriate, and consistent manner. A full description of the disciplinary process is outlined in the Employee Handbook. In addition to those set forth in the Employee Handbook, instances of employee misconduct specifically related to compliance may include, but are not limited to, the following:

- Failing to report suspected problems;
- Participating in non-compliant behavior; and/or
- Encouraging, directing, facilitating or permitting non-compliant behavior

B. *Progressive Discipline*

If a supervisor determines that an employee's job performance is deficient or has deteriorated seriously or if there is employee misconduct, the supervisor may initiate one or more of the following steps in the disciplinary process. This process is intended to give employees an opportunity to change undesirable behavior or to correct performance deficiencies where the immediate supervisor believes the employee has the potential to correct such problems.

Certain actions or violations may be considered so disruptive or dangerous that The Foundling may determine that suspension or immediate dismissal without notice is necessary.

i. Verbal Counseling

This is counseling for a minor infraction of the rules or failure to meet minimum performance expectations. It does not constitute formal discipline. Care shall be taken to ensure

that the employee understands the reason(s) for the counseling, the ways in which they can improve, and that failure to improve performance can result in formal discipline.

ii. Verbal Warning

This warning is for continued minor infractions or failure to meet minimum performance standards. These issues may have been addressed in verbal counseling. This is formal discipline and does state how the employee is to improve and failure to do so can result in further discipline. The verbal warning is a permanent part of the employee's personnel file.

iii. Written Warning

This is a formal warning for repetition of actions previously the subject of verbal warning, or for a serious infraction of the rules that warrants significant initial disciplinary response. Where applicable, this notice shall refer to any prior verbal counseling. The written warning shall be specific as to the employee's deficiencies, i.e. quality and quantity of work, accuracy, etc. It shall also state the action to be taken if there is no improvement, i.e. suspension or termination. The written warning is a permanent part of the employee's personnel file.

iv. Suspension

This is disciplinary time off without pay for failure to improve after prior written warning or for a serious violation of agency rules. The employee shall receive written notice of the suspension. The notice shall be specific as to the dates of the suspension and shall specify the action to be taken if improvement is not noted, i.e. termination.

v. Termination

This is an involuntary separation from employment with the agency. This action is normally the final step in the disciplinary process however, specific circumstances may require termination as the just and only action.

C. *Employee Evaluations*

The Foundling has adopted an Employee Accountability and Performance Review Policy that can be found in The Foundling Organization Manual. All employees are expected to familiarize themselves with that policy as well as the policies stated herein. The Vice President of Human Resources will include in all standard employee evaluation forms one or more questions relating to ethics and compliance with applicable The Foundling policies and legal requirements. The Foundling supervisors and managerial staff will provide accurate and complete information in response to such questions when preparing employee evaluations.

D. *Record Retention*

The Foundling has adopted a Records Retention Policy that can be found in The Foundling Organization Manual. All employees are expected to familiarize themselves with that policy as well as the policies stated herein. All records regarding the imposition of disciplinary measures under this policy will be retained by Human Resources for a period of seven years.

VI. **Audit, Monitoring and Identification of Risk Areas**

The Foundling has adopted a Financial Accountability Policy that can be found in The Foundling Organization Manual. All employees are expected to familiarize themselves with that policy as well as the policies stated herein. The Foundling seeks to identify compliance issues at an early stage before they develop into significant legal problems. One of the key methods of achieving this goal is the performance of regular internal audits and compliance reviews.

A. *Oversight of the Internal Auditing Process*

The Chief Compliance Officer will be responsible for overseeing The Foundling's internal auditing system. The Chief Compliance Officer is authorized to delegate auditing duties to other The Foundling personnel as well as outside attorneys, accountants and vendors as necessary and appropriate.

B. *Subjects for Auditing*

Internal audits will cover at least the following subjects:

- The accuracy and completeness of the cost reports submitted by The Foundling to New York State or local regulatory agencies;
- The access of clients to medically necessary health care and social services that are required to be provided or paid for by The Foundling;
- The quality and appropriate utilization of health care and social services provided or paid for by The Foundling;
- Billing by other health care or social service providers for services that are covered by the per diem rate received by The Foundling;
- Coordination of benefits between Medicaid and other third-party payers;
- Service and leasing arrangements between The Foundling and other organizations with which The Foundling exchanges client referrals; and
- Identification of areas in which The Foundling may be particularly at risk for non-compliant behavior.

C. Audit Procedures

The Chief Compliance Officer will develop audit tools and procedures for carrying out the audits required by this policy. The Chief Compliance Officer, with the approval of the Chief Executive Officer, may contract with outside companies to perform certain auditing functions. The Chief Compliance Officer will oversee the services provided by any outside vendors.

The Chief Compliance Officer will, whenever feasible, seek to have audits carried out by The Foundling employees who are not otherwise involved in the delivery of the services subject to the audit. It is understood, however, that it may be appropriate for employees to perform an audit of their own department's activities if The Foundling does not have sufficient staff available in other departments to conduct the audit or the staff in other departments lacks the relevant expertise to effectively carry out the audit. If a department audits its own activities, the Chief Compliance Officer will design audit procedures that minimize auditing by employees of their own work.

In the event the Chief Compliance Officer determines it is in the best interests of The Foundling to keep the contents and/or findings of any audit confidential, the Chief Compliance Officer will arrange for the Legal Counsel or outside counsel to conduct and/or supervise the audit. In such event, employees will be advised that the audit is being conducted under the attorney-client privilege and the audit report will indicate that such privilege is applicable.

D. Audit Schedule

On an annual basis, the Chief Compliance Officer will develop a schedule for internal audits for the upcoming year. The schedule will specify the subject of each audit, the audit methodology, the time period during which the audit will be carried out and the personnel or contractors to be used to perform the audit. Audit subjects will be selected from among the topics specified in this policy and will include any other topics deemed appropriate by the Chief Compliance Officer. The Chief Compliance Officer will select audit subjects based on the level of risk associated with the subject, any prior history of violations, the length of time that has passed since the most recent audit on the same subject and the cost of performing the audit. The Chief Compliance Officer will ensure that any internal audits mandated by law or contract be carried out on a schedule consistent with such requirements. Nothing in this policy is intended to require internal auditing on all of the matters specified herein each year or on any other specific schedule. The Chief Compliance Officer will use best efforts to minimize any disruption of The Foundling's business activities caused by internal audits.

All employees are required to participate in and cooperate with internal audits as requested by the Chief Compliance Officer. This includes assisting in the production of

documents, explaining program operations or rules to auditors and implementing any corrective action plans.

E. Audit Reports

Upon completion of an audit, the Chief Compliance Officer will arrange for the preparation of a written audit report. The report will set forth the subject of the audit, the audit methodology, an evaluation of any potential or actual non-compliance discovered and any recommended corrective action. The report will be provided to the Chief Executive Officer and any appropriate department directors. The Chief Compliance Officer or designee will work with the relevant department director to ensure that all recommended corrective action is taken and will require the department director to report to the Chief Compliance Officer when implementation is completed. Any criminal activity or overpayments discovered through an audit will be handled in accordance with policies expressed herein. All audit reports will be maintained by The Foundling indefinitely.

VII. Response and Remedial Systems

The Foundling has adopted an Incident Management Policy that can be found in The Foundling Organization Manual. All employees are expected to familiarize themselves with that policy as well as the policies stated herein.

A. Internal Investigations

All reports of fraudulent, abusive or other improper conduct made through the Compliance Hotline or directly to the Chief Compliance Officer or designee will be promptly reviewed. Whether received directly, through one of the reporting mechanisms, or an internal audit, the Chief Compliance Officer, in consultation with other The Foundling staff and counsel as appropriate, will determine if a report warrants an investigation. The Chief Compliance Officer will use best efforts to make this determination within ten days of the receipt of the report.

If the Chief Compliance Officer determines an investigation is warranted, he or she will promptly coordinate an investigation. The Chief Compliance Officer may obtain the assistance of other Foundling staff and outside legal and financial advisors as necessary to carry out a proper investigation. All employees will be required to cooperate in such investigations. The Chief Compliance Officer will monitor the activities of any outside advisors performing investigative services for The Foundling. The Foundling will make reasonable efforts to protect the identity of any individuals filing non-anonymous reports except when disclosure of the individual's identity is necessary to conduct an effective investigation.

The Chief Compliance Officer will provide the Chief Executive Officer with regular reports of all pending investigations. The Chief Compliance Officer, in consultation with the Chief Executive Officer, will have the authority to order the temporary suspension of any Foundling activity that is the subject of a pending investigation.

Upon completion of an investigation, the Chief Compliance Officer will prepare a written report of the investigation's findings, which will indicate whether fraudulent, abusive or other improper conduct was committed. If such conduct is found, the Chief Compliance Officer will recommend to the Chief Executive Officer and VP of Human Resources, if appropriate, any corrective or disciplinary action deemed appropriate.

The Chief Compliance Officer will maintain a file of all compliance-related reports, including reports filed through the reporting mechanisms and other means. The log will specify the nature of the report, the date of the report, the reporting method, the name of the person filing the report, whether an investigation was conducted and if so the outcome of the investigation and the corrective or disciplinary action, if any, taken by the Foundling. The file, investigation reports and other related documents will be maintained by the Chief Compliance Officer for no less than seven years. These documents will be kept confidential and will be shared with employees or advisors only as necessary to comply with this policy or to otherwise carry out The Foundling operations.

B. *Remedial Action*

The Foundling is committed to taking prompt corrective action to address any fraud, abuse or other improper activity identified through internal audits, investigations, reports by employees or other means. The Chief Executive Officer is generally responsible for reviewing and approving all corrective action plans. However, the Chief Compliance Officer is authorized to recommend corrective action directly to the Board of Directors if the Chief Compliance Officer believes, in good faith, that the Chief Executive Officer is not promptly acting upon such a recommendation. In cases involving clear fraud or illegality, the Chief Compliance Officer also has the authority to order interim measures, such as a suspension of billing, while a recommendation of corrective action is pending. Corrective action may include, but is not limited to, any of the following steps:

- Modifying The Foundling's existing policies, procedures or business practices;
- Providing additional training or other guidance to employees or contractors;
- Seeking interpretive guidance of applicable laws and regulations from government agencies;
- Disciplining employees or terminating contractors;

- Notifying law enforcement authorities of criminal activity by employees, contractors or any other party affiliated with The Foundling;
- Returning overpayments or other funds to which The Foundling is not entitled to the appropriate government agency or program; or
- Self-disclosing fraud or other illegality through established state and federal self-disclosure protocols.

C. Notification of Government Authorities

The Chief Compliance Officer, in consultation with the Legal Counsel and the Chief Executive Officer, will determine whether and in what manner it is appropriate to report any detected fraud, abuse, or improper activity to federal, state or local government agencies. Such reporting may involve, depending on the circumstances, refunding overpayments to Medicaid or other government payers, making a self-disclosure to the Office of the Medicaid Inspector General in accordance with formal or informal protocols established by the appropriate government agency or alerting law enforcement authorities.

D. Self-Disclosures/Overpayments

For any receipt of overpayment under the Medicaid program, directly or indirectly, the Foundling has a policy that explicitly states how the agency reports, returns, and explains over payments. The policy details the Self-disclosure process for the OMIG's self-disclosure program. The Foundling returns payments made within 60 days of overpayment being identified.

VIII. Whistleblower Protections

A. Whistleblower Policy

A whistleblower as defined by this policy is an employee of The Foundling who reports an activity that he or she considers to be illegal or dishonest to one or more of the parties specified in this policy. The whistleblower is not responsible for investigating the activity or for determining fault or corrective measures. Appropriate management officials are charged with these responsibilities.

Examples of illegal or dishonest activities are violations of federal, state or local laws; billing for services not performed or for goods not delivered; and other fraudulent financial reporting.

If an employee has knowledge of or is concerned about illegal or dishonest fraudulent activity, the employee should follow the reporting procedures outlined above. The employee

must exercise sound judgment to avoid baseless allegations. An employee who intentionally files a false report of wrongdoing will be subject to discipline up to and including termination.

Whistleblower protections are provided in two important areas – confidentiality and non-retaliation. To the extent possible, the confidentiality of the whistleblower will be maintained; however, the identity of the whistleblower may have to be disclosed to conduct a thorough investigation, to comply with the law or to provide accused individuals their legal rights of defense. The Foundling will not tolerate retaliation nor retaliate against a whistleblower. No employee who files a report of suspected fraud, abuse or other improper activity in good faith will be subject to retaliation by The Foundling in any form. Prohibited retaliation includes, but is not limited to, terminating, suspending, demoting, failing to consider for promotion, harassing or reducing the compensation of any employee due to the employee's intended or actual filing of a report. Employees should immediately report any such retaliation to the appropriate party through the channels mentioned above. The right of a whistleblower to protection against retaliation does not include immunity for any personal wrongdoing that is alleged and investigated.

All reports of illegal and dishonest activities will be promptly submitted to the Vice President of HR who is responsible for investigating and coordinating corrective action. Employees with any questions regarding this policy should contact the Human Resources.

B. Non-Retaliation

The Board of Trustees shall provide an accessible and safe communication process for employees to make known to the Board any irregularities regarding the use of funds. There will be no retaliation against any employee for good faith reports of irregularities. Frivolous, fraudulent, or malicious reporting will be subject to disciplinary action.

Summary

The Foundling has adopted the Compliance Program with the goal of carrying out all of its activities in accordance with law and the highest ethical standards. The effectiveness of the Compliance Program hinges on the active participation of all employees in preventing, detecting and appropriately responding to fraud, abuse or other misconduct. Working together, we can make The Foundling a model of excellence and integrity in the community.