



The Child Center of NY, Inc.

**COMPLIANCE PLAN
2025**

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I. Overview

A. GENERALLY

It is the mission of The Child Center of NY, Inc. (hereinafter, “TCCNY” or “The Child Center” or “The Child Center of NY”) to comply with all legal and ethical obligations to provide the highest quality care while improving the health and well-being of our communities and to conduct its business in compliance with all applicable Laws, rules, regulations and other directives of the federal, state and local governments and agencies. It is TCCNY’s goal to maintain the highest level of professionalism with an emphasis on transparency and quality care.

TCCNY has adopted and implemented a comprehensive Compliance Program (the “Compliance Program”) that establishes compliance policies and procedures and sets forth the standards of conduct that all agents, subcontractors, independent contractors, officers, governing body and corporate officers (“Affected Individuals”) are expected to follow in their course of dealings with or on behalf of TCCNY. TCCNY expects a complete and total commitment to its compliance program by all Affected Individuals.

This Compliance Program shall apply to the participation, conduct and activities of Affected Individuals to the extent their participation, conduct or activities affect TCCNY’s operations.

B. DEFINITIONS

The following definitions apply to the policies and procedures herein.

1. **Abuse:** In connection with the submission of claims for health care services, eligibility checks and the obtaining of authorizations, abuse can generally be defined as practices that are inconsistent with accepted and sound fiscal, business practices which directly or indirectly may result in (1) unnecessary costs to federal or state health care programs; (2) improper payment; (3) the submission of claims for services that fail to meet professionally recognized standards of care or are medically unnecessary; (4) the submission of claims for services that directly or indirectly result in adverse Patient outcomes or delays in appropriate diagnosis or treatment, and/or (5) misappropriation of funds.
2. **Affected Individuals:** All individuals and entities that participate in or do business with TCCNY including but not limited to all of TCCNY’s employees, the chief executive and other senior administrators, managers, contractors, agents, subcontractors, independent contractors, and governing body and corporate officers.
3. **CMS:** The Centers for Medicare and Medicaid Services.
4. **Code of Conduct:** The written standards of conduct that all Affected Individuals are expected to comply with as a condition of employment or engagement with TCCNY.

5. **Compliance Committee:** The individuals selected to provide oversight and leadership of the Compliance Program.
6. **Compliance Officer:** The individual who is responsible for the day-to-day coordination, oversight and monitoring of TCCNY's compliance Plan and Program.
7. **Compliance Plan:** This written document setting forth TCCNY's commitment and approach to promoting compliance with applicable laws and regulations described herein
8. **Compliance Program:** The totality of the Compliance Plan, Code of Conduct supporting Policies and Procedures, and all related activities and initiatives that are collectively designed to ensure TCCNY's compliance with applicable laws and regulations and described herein.
9. **DOH:** The New York State Department of Health.
10. **Fraud:** An individual or entity's intentional deception or misrepresentation to an individual, entity or the public at large with the knowledge or expectation that such deception could result in some unauthorized benefit to such individual or entity or some other person or entity.
11. **Fraud and Abuse:** In the context of the Compliance Program, fraud and abuse consists of violations of federal, state, and local fraud and abuse statutes, rules and regulations including, but not limited to state and federal anti-kickback and self-referral Laws, the Federal False Claims Act, the Program Fraud Civil Remedies Act, the New York False Claims Act and New York Health Care Fraud Laws.
12. **Governing Body:** The Board of Directors of TCCNY.
13. **Government Agent(s):** Any agent or representative acting in an official capacity for or on behalf of a federal, state or local government agency including but not limited to, the U.S. Department of Health and Human Services (HHS) Office of Inspector General (OIG), Centers for Medicare and Medicaid Services (CMS), U.S. Department of Justice (DOJ), United States Attorney's Office, New York State Office of the Medicaid Inspector General, (OMIG), New York State Attorney General's Medicaid Fraud Control Unit (MFCU), and the New York State Department of Health (DOH).
14. **HIPAA:** HIPAA shall mean the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated by the United States Department of Health and Human Services thereunder, the Health Insurance Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act of 2009 and the Omnibus Rule enacted in 2013, all as may be amended from time to time.
15. **Law(s):** Any and all federal, state, local laws, regulations, rules, ordinances, administrative directives and any other binding governmental directives.

16. **OIG:** The Office of the Inspector General of the United States Department of Health and Human Services.
17. **OMIG:** The New York State Office of the Medicaid Inspector General.
18. **Clients:** Any Clients of TCCNY.
19. **Provider:** Any individual, company, corporation or organization that submits claims for reimbursement to a federal or state health care program.

C. THIS PLAN

This Compliance Plan is intended to be a guide and resource to ensure that TCCNY's operations are in compliance with all applicable Laws and regulations. All Affected Individuals must read and understand this Compliance Plan, as well as review it as needed in order to recognize situations that create a conflict of interest, an appearance of impropriety, or otherwise are contrary to the policies of TCCNY.

D. IMPORTANCE OF THE COMPLIANCE PROGRAM

The implementation of an effective Compliance Program is important for several reasons: First and foremost, it is essential that we ensure that we are operating pursuant to the highest ethical standards and in conformity with all applicable legal rules. This is important for our continuing reputation for honesty and integrity in all of our dealings with others. An effective Compliance Program will help ensure that we are living up to this reputation and continue to deserve that trust.

Moreover, our Compliance Program is intended to significantly reduce the risk of unlawful conduct in connection with TCCNY's operations and to demonstrate TCCNY's good faith effort to comply with applicable statutes, regulations, and other state and federal healthcare program requirements and Laws. Compliance with state and federal rules and regulations is essential because of our potential civil or even criminal liability if we were found to have violated the applicable legal standards. A governmental inquiry can result in very high financial exposure and damage to our reputation for honesty and integrity. Prevention is certainly the wiser business plan, and this Compliance Plan and our overall Compliance Program is designed to educate Affected Individuals and prevent violations from occurring. This Compliance Program demonstrates to Affected Individuals and the community, TCCNY's strong commitment to:

- (i) Honest and responsible provider conduct;
- (ii) Improving the quality of Patient care through better documentation;
- (iii) Minimizing billing mistakes, thereby optimizing proper payment of claims;
- (iv) Reducing chances of a negative outcome if audited by the government;
- (v) Minimizing the risk of violations of Laws governing the operation of TCCNY, including but not limited to, state and federal anti-kickback and self-referral Laws,

- the Federal False Claims Act, the Program Fraud Civil Remedies Act, the New York False Claims Act and New York Health Care Fraud Laws;
- (vi) Developing and maintaining a culture, and implementing reporting procedures, that encourage(s) Affected Individuals to report potential problems; and
 - (vii) Promptly detecting and reporting potential or actual violations and initiate immediate and appropriate corrective action, which reduces TCCNY's exposure to administrative actions, civil damages and penalties, and criminal fines and sanctions, and minimizes losses incurred by the government as a result of overpayment.

Additionally, OMIG requires TCCNY to maintain an effective Compliance Program that meets the requirements of New York Social Services Law §363-d subd. 2 and 18 NYCRR §521-1.4 which set out the following seven core elements that shall be included in all compliance programs:

1. **ELEMENT 1:** Adoption and distribution of written policies, procedures and standards of conduct that (a) articulate the organization's commitment to comply with all applicable federal and state standards, (b) describe compliance expectations as embodied in the standards of conduct, (c) implement the operation of the compliance program, (d) provide guidance to employees and Affected Individuals on dealing with potential compliance issues, (e) identify how to communicate compliance issues to appropriate compliance personnel, (f) describe how potential compliance issues are investigated and resolved by the organization, (g) include a policy of non-intimidation and non-retaliation for good faith participation in the compliance program, including but not limited to reporting potential issues, investigating issues, conducting self-evaluations, audits and remedial actions, and reporting to appropriate officials, and (h) all requirements listed under 42 U.S.C. 1396-a(a)(68) [Deficit Reduction Act requirements];
2. **ELEMENT 2:** Designation of a compliance officer and a compliance committee who report directly and are accountable to the organization's chief executive (or other senior management) and governing body;
3. **ELEMENT 3:** Establishment and implementation of effective training and education for all Affected Individuals. Such training and education shall occur at a minimum annually and shall be made a part of the orientation for a new employee and new appointment of a chief executive, manager, or governing body member;
4. **ELEMENT 4:** Establishment and implementation of effective lines of communication, ensuring confidentiality except in limited circumstances and a prohibition against intimidation and retaliation for good-faith participation in the Program. Such lines of communication shall be accessible to all Affected Individuals and Medicaid Recipients and allow compliance issues to be reported including a method for anonymous and confidential good faith reporting of potential compliance issues as they are identified;

5. **ELEMENT 5:** Well publicized disciplinary standards through the implementation of procedures which require good faith participation in the compliance program by all affected individuals;
6. **ELEMENT 6:** Establishment and implementation of an effective system for routine monitoring and identification of compliance risks. The system should include internal monitoring and audits and, as appropriate, external audits, to evaluate the organization's compliance with the medical assistance program requirements and the overall effectiveness of the compliance program; and
7. **ELEMENT 7:** Establishment and implementation of procedures and a system for promptly responding to compliance issues as they are raised, investigating potential compliance problems as identified in the course of self-evaluations and audits, correcting such problems promptly and thoroughly to reduce the potential for recurrence, and ensure ongoing compliance with the state and federal requirements, including the timely self-disclosure of identified overpayments.

To be effective, however, a Compliance Program must be a real part of our culture, mission, and values and must be updated and ongoing in response to changes in the Law, and as new or additional compliance risk areas are identified. As a result, we must demonstrate that we are committed to, and exercise, due diligence in seeking to and detect and/or prevent violations of Laws or the Compliance Plan. TCCNY's Compliance Program is designed and will be maintained to satisfy all of the above requirements.

E. QUESTIONS AND CONCERNS

If an Affected Individual is unsure of what the appropriate course of conduct might be in a specific situation, or believes that any Laws or the standards of conduct set forth in this Compliance Plan or our Code of Conduct may have been violated or that a previously identified problem has not been effectively remedied, then the Affected Individual is required to contact the Compliance Officer, Alina Mason, Esq. by telephone at (929) 456-9907, by mail at 118-35 Queens Boulevard, 6th, Floor, Forest Hills, NY 11375, by email at alinamason@childcenterny.org, or by calling TCCNY's dedicated Compliance Hotline at (844) 293-5626. All calls and/or correspondence will be held in strictest confidence to the extent possible and may be submitted anonymously. The Compliance Officer, or an applicable designee, is responsible for monitoring the Compliance Hotline.

II. COMPLIANCE PROCEDURES

Part II summarizes the rules under which The Child Center’s Compliance Program will operate. To be effective, a compliance program must provide for the following: continued reporting of issues or possible violations of the Code of Conduct to the Compliance Officer; enforcement of the Code of Conduct through the proclamation of disciplinary procedures; continued, periodic reviews and self and external audits; and implementation of modifications in the Compliance Plan and Program, as necessary to prevent future violations.

A. COMPLIANCE PERSONNEL

A compliance program can only work effectively if responsibility for it is placed with accountable individuals. For TCCNY, that responsibility is set forth as follows:

1. Compliance Officer. It is the policy of TCCNY to ensure it conducts its business in compliance with all applicable Laws, rules, regulations and other directives of the federal, state, and local governments, departments and agencies. In that regard, TCCNY shall at all times have an individual designated by the chief executive and the Governing Body as a Compliance Officer who is responsible for the day-to-day operations of the Compliance Program, to serve as the focal point for compliance activities, and be responsible for coordinating and overseeing all aspects of the Compliance Program, and shall make regular reports to the chief executive (or their designee), the Governing Body and the Compliance Committee.

The Compliance Officer shall be an individual who knows, and is known by, TCCNY’s Affected Individuals. Although by regulation the compliance officer is not required to be an employee of the provider, the designee must carry out the primary responsibilities for the compliance officer, including development of an annual compliance work plan.

The Compliance Officer shall be assisted, as necessary, by legal counsel and the Compliance Committee, as described below. The Compliance Officer shall report directly to the Chief Executive (or his or her designee) and the Governing Body. The Compliance Officer will also be assisted by members of the Compliance Department and Compliance Committee.

The Compliance Officer is the Compliance Program’s “point person” and is responsible for receiving and responding to all reports, complaints, and questions regarding compliance issues. The Compliance Officer will report directly to the chief executive (or their designee) and the Governing Body on the activities of the Compliance Committee and the Compliance Program. The Compliance Officer will have the authority to review all documents and other information that are relevant to compliance activities. The Compliance Officer is responsible for ensuring that compliance issues are properly addressed as they arise and that appropriate compliance assurance reviews, audits, and inquiries are conducted. The Compliance Officer will also be responsible for determining whether each component of the Compliance Program is fully operational, and to take remedial action, as necessary. Such responsibilities shall include:

- Assessing and revising the Compliance Plan, or any policies and procedures promulgated thereunder, when necessary, in response to changes in the needs of TCCNY, the identification of risk areas specific to TCCNY and in the applicable Laws and regulations;
- Developing, coordinating and participating in compliance training programs and education that focus on the elements of TCCNY's Compliance Program;
- Maintaining a log that records calls and/or reports to the Compliance Officer, including the nature of any investigation and its results. Such information shall be redacted of individual identifiers and included in reports to the chief executive (or their designee), the Compliance Committee, and the Governing Body in compliance with the minimum necessary standard;
- Coordinating internal compliance review and monitoring activities, including annual or periodic reviews and oversee any resulting corrective action;
- Conducting or overseeing unannounced audits to comply with the requirements of the auditing and monitoring of the Compliance Program;
- Overseeing the maintenance of documentation of the following: audit results; logs of Compliance Hotline calls and their resolution; internal and external investigations; due diligence efforts regarding business transactions; records of training, including the number of training hours; disciplinary or corrective action, including self-disclosures; and modification and distribution of policies and procedures; and
- Attending Compliance Committee meetings.
- Working in partnership with leadership, clinical and administrative teams to identify and implement strategies that improve operational efficiency while ensuring compliance with applicable laws, regulations and organizational policies.
- Collaborating with clinical and administrative teams to identify and implement strategies that enhance the quality of service delivery.
- Collaborating with organizational leadership and relevant departments to identify and implement strategies that minimize waste and inefficiencies within operations.

If the Compliance Officer has other duties, the provider must demonstrate that they have assessed whether the other duties hinder the compliance officer in carrying out their primary responsibilities, and whether the compliance officer is able to satisfactorily perform their responsibilities. Such assessment should be completed during the annual compliance program effectiveness review (as required in Element 6), or whenever the Compliance Officer's duties change.

- a. **Process for assessing the impact of additional duties on the Compliance Officer's primary responsibilities and ensuring the Compliance Officer has been allocated sufficient staff and resources**

To ensure that the Compliance Officer is able to satisfactorily perform their responsibilities for the day-to-day operation of the Compliance Program, TCCNY has established a formal process to assess whether 1) the Compliance Officer's additional duties interfere with their primary compliance responsibilities and 2) the Compliance Officer was allocated sufficient staff and resources. This assessment is crucial to maintain the integrity and effectiveness of the organization's compliance program. Outlined below is the process by which TCCNY shall determine on an annual basis that the Compliance Officer's additional duties do not interfere with their compliance responsibilities and that they have been allocated sufficient staff and resources:

- **Annual Assessment:** TCCNY shall conduct a comprehensive evaluation at least once a year to determine 1) if the Compliance Officer's other assigned duties hinder their ability to fulfill primary compliance responsibilities and 2) whether the Compliance Officer has been allocated sufficient staff and resources. This assessment will take place as part of TCCNY's annual compliance program effectiveness review.
- **Assessment Triggers:** An assessment may also be initiated whenever there is a significant change in the Compliance Officer's job description, responsibilities, or organizational structure that may affect their compliance duties.
- **Assessment Criteria:** The annual assessment shall focus on the following criteria:
 - Evaluate the time allocation between compliance and non-compliance duties.
 - Assess the complexity and demands of additional duties.
 - Determine if the Compliance Officer has sufficient resources and support to manage compliance responsibilities effectively.
- **Documentation:** TCCNY shall maintain detailed records of the assessment process, findings, and any corrective actions taken. Such documentation may include job descriptions, organizational charts, and performance evaluations.
- **Reporting:** The assessment findings shall be presented to the organization's governing body, chief executive, and compliance committee. Such presentation ensures transparency and accountability in addressing any identified issues.
- **Corrective Actions:** If the assessment reveals that additional duties are hindering compliance responsibilities or that the Compliance Officer has not been allocated sufficient resources, the organization's chief executive and governing body shall take prompt corrective measures. Such measures may include adjusting the Compliance Officer's workload, reassigning certain duties, or providing additional resources and staff as necessary.

b. Procedure for addressing potential risks when combining the legal and compliance functions

TCCNY acknowledges that combining the roles of General Counsel and Compliance Officer may present inherent conflicts of interest, as each position serves distinct functions: the General Counsel acts as a legal advocate for the organization, while the Compliance Officer is responsible for objectively monitoring and enforcing compliance

with laws, regulations, and internal policies. This dual role can potentially compromise the independence and effectiveness of the compliance function.

Recognizing these concerns, and in alignment with guidance from the U.S. Department of Health and Human Services Office of Inspector General (OIG), TCCNY implements the following measures to mitigate potential conflicts and uphold the integrity of its compliance program:

- 1. Establishment of an Independent Compliance Committee:** The Compliance Committee shall be comprised of members without dual roles and shall oversee the compliance program's effectiveness, provide guidance, and ensure that compliance issues are addressed impartially.
- 2. Direct Reporting to the Board of Directors:** The Compliance Officer shall have direct, unrestricted access to the Board of Directors or a designated committee thereof for matters related to compliance, ensuring that compliance concerns can be raised without undue influence.
- 3. Regular Assessments of Role Effectiveness:** TCCNY leadership shall conduct periodic assessments, at least annually, to evaluate whether the dual role arrangement hinders the Compliance Officer's ability to fulfill compliance responsibilities effectively. These assessments shall be documented and reviewed by the Board.

By implementing these measures, TCCNY strives to balance resource constraints with the necessity of an effective and independent compliance program, in accordance with applicable laws and best practices.

2. Compliance Committee. The Child Center has established a Compliance Committee composed of the Compliance Officer, other senior management, and other key personnel of TCCNY (the "Compliance Committee"). The Compliance Committee shall operate in accordance with a written committee charter setting forth its membership, roles and responsibilities. The Compliance Committee is responsible for coordinating with the Compliance Officer to ensure that TCCNY is conducting its business in an ethical and responsible manner, consistent with its Compliance Program.

The Compliance Committee has been entrusted with certain oversight functions:

- a. Overseeing and monitoring the implementation of the Compliance Program, including the development of written standards, policies, and procedures;
- b. Conducting ongoing reviews of the Code of Conduct and revising as necessary;
- c. Establishing methods, such as periodic audits, to improve TCCNY's performance and operations, and to reduce the vulnerability of fraud and abuse;
- d. Reviewing at least annually, and revising as needed, the Compliance Plan in light of changes in the Law and in the standards and requirements of OMIG, and in response to any

identified risk areas specific to TCCNY;

- e. Developing, coordinating and participating in training and educational programs that focus on the components of the Compliance Program and ensuring that all Affected Individuals complete compliance training and education during orientation and annually;
- f. Advocating for the allocation of sufficient funding, resources and staff for the compliance officer to fully perform their responsibilities;
- g. Investigating any report or allegation concerning possible compliance issues and monitoring subsequent corrective action and/or compliance;
- h. Ensuring that TCCNY has effective systems and processes in place to identify compliance program risks, overpayments and other issues, and effective policies and procedures for correcting and reporting such issues;
- i. Providing guidance to Affected Individuals on how to promote compliance at TCCNY;
- j. Assisting the Compliance Officer with the Compliance Program as necessary, including the overseeing of disciplinary actions and the assessment of its effectiveness;
- k. Approving reports of compliance activities, including findings and recommendations of the Compliance Officer; and
- l. Developing communication methods to keep Affected Individuals regularly updated regarding compliance activities.

3. Modification and Revision of the Compliance Procedures and Compliance Program.

On at least an annual basis, the Compliance Officer will review and evaluate the effectiveness of the Compliance Program. With the support of the Compliance Committee, the Compliance Officer will perform an assessment of the Compliance Program, including reviewing issues reported, their investigation, and remedial action taken. Based on such reviews, the Compliance Officer will then recommend to the Compliance Committee and the Governing Body appropriate modifications of, or revisions to, the compliance procedures and this Compliance Program.

The Compliance Committee will annually compile a report summarizing all of the activities, training, investigations, hotline issues and audits completed during the prior year. This report will be provided to the Governing Body annually. The annual compliance report will serve as a communications tool informing the members of the Governing Body of the various compliance activities undertaken during that year.

B. REPORTING, REVIEW, AND CORRECTIVE ACTION

It is the policy of TCCNY to have in operation an internal reporting mechanism for Affected

Individuals to report actual or perceived violations of the Compliance Program, TCCNY's policies and procedures and applicable Laws and regulations as they relate to TCCNY's operations. Mechanisms include processes to communicate written, oral and electronic reports and complaints from Affected Individuals, Patients and community members. The Compliance Officer's contact information and the Compliance Hotline number will be distributed at Provider's offices.

1. Reporting and Complaint Procedures. All Affected Individuals should raise any compliance questions regarding potentially improper, unethical, or illegal conduct to the Compliance Officer or any member of the Compliance Committee. All Affected Individuals are required to communicate and report any suspected fraud or abuse or other violation of the Compliance Program. The Compliance Officer will maintain open lines of communication, and may be reached by telephone at (929) 456-9907, by mail at 118-35 Queens Boulevard, 6th, Floor, Forest Hills, NY 11375, by email at alinamason@childcenterny.org, or by calling TCCNY's dedicated Compliance Hotline at (844) 293-5626.

An "open-door policy" will be maintained throughout TCCNY to encourage the reporting of compliance issues and concerns. All concerns and issues received by others should be immediately reported to the Compliance Officer. Any communication regarding an actual or perceived violation should be documented in writing on a report form or other format, and should include an explanation of the reporter's knowledge and all information related to the potential violation including:

- A description of the type of problem,
- The date of occurrence,
- The place of the occurrence, and
- Any other pertinent information.

The Compliance Officer, whether receiving the report directly or otherwise, will promptly collect, assemble and assess all information relating to the potential violation and will report to the Governing Body and consult with legal counsel when necessary. The Compliance Officer will maintain a log and supporting documentation of all reports received, and how each was addressed, in accordance with this policy.

a) Access to Compliance Officer and Open Lines of Communication. TCCNY recognizes that open lines of communication are important to the successful implementation of its Compliance Program and its goals of reducing the potential for fraud, abuse and waste. All Affected Individuals are required to communicate and report any suspected fraud or abuse or other violation of the Compliance Program. Suspicions should be reported directly to an immediate supervisor and/or the Compliance Officer. The Compliance Officer shall develop and maintain open lines of communication to encourage the reporting of compliance-related concerns. Reporting can be accomplished through a written statement or directly to a supervisor or the Compliance Officer. In addition, compliance related concerns may be reported directly to the Compliance Officer through a "Compliance Hotline" at (844) 293-5626 that has been set up for anonymous and confidential reporting. This Hotline is composed of a voice-mail telephone line monitored by the Compliance Officer and/or a designee. In addition to raising questions directly with the Compliance Officer, all Affected Individuals, may call the Hotline to report possible violations, ask questions,

or raise compliance concerns. There will be no retaliatory action taken against individuals who report compliance issues in good faith.

b) Grievances and Complaints. Grievances and complaints, both verbal and written, from Affected Individuals, may contain complaints or allegations of possible misconduct, compliance issues, fraud, waste, or abuse in relation to TCCNY's operations. Procedures have been developed that require any complaints which identify potential compliance concerns to be provided immediately to the Compliance Officer. The Compliance Officer is responsible for ensuring that investigation protocols are followed and any potential issues identified are resolved. Issues that may be identified through the investigative process will be presented, as appropriate, to the Compliance Committee.

c) Confidentiality and Anonymity. Any concern may be raised anonymously, if the reporting individual so chooses, and will be held in the strictest confidence possible, consistent with the need to investigate any allegations of wrongdoing. To the extent possible, the Compliance Officer or anyone else receiving a report in accordance with this policy will not reveal the identity of anyone who reports a suspected violation of Law or who takes part in an investigation. Such confidentiality shall be maintained unless or until the matter is:

- i) subject to a disciplinary proceeding,
- ii) referred to or under investigation by, MFCU, OMIG or law enforcement, or
- iii) disclosure is required during a legal proceeding,

The Compliance Officer is duty-bound to act in the best interests of TCCNY and does not act as the personal or legal representative of reporting individual.

d) Intimidation and Retaliation Prohibited. TCCNY strictly prohibits intimidation and retaliation in any form against an individual or entity who in good faith reports possible unethical or illegal conduct and/or who participates in the Compliance Program, including but not limited to, reporting and investigating potential issues, conducting self-evaluations, audits, and remedial actions, and reporting to appropriate officials. Any action of intimidation or retaliation is itself a serious violation of the Compliance Program. Participating in or condoning any form of intimidation or retaliation against an individual who participates in good faith in the Compliance Program may result in disciplinary or corrective action up to, and including, termination and/or exclusion from TCCNY. Retaliatory acts should be immediately reported to the Compliance Officer and will be reviewed, and offenders will be disciplined accordingly.

Any act of intimidation or retaliation is a serious violation of TCCNY's Compliance Program. Individuals found to have participated in or condoned such actions may face disciplinary measures, up to and including termination of employment or contractual relationships, and/or exclusion from TCCNY. TCCNY encourages the prompt reporting of any suspected acts of intimidation or retaliation. Reports should be directed to the Compliance Officer, who will ensure that all allegations are reviewed thoroughly and impartially. Confidentiality will be maintained to the extent possible, and appropriate corrective actions will be taken based on the findings of the review. By fostering an environment where individuals can report concerns without fear, TCCNY upholds its commitment to ethical practices and compliance with all applicable laws and regulations.

e) **Investigation and Corrective Action.** Upon receiving a report of possible non-compliance, the Compliance Officer will bring such report to the attention of the Compliance Committee, the Governing Body and legal counsel, as necessary. TCCNY is committed to investigating all reported concerns promptly and confidentially to the extent possible. The Compliance Officer and/or legal counsel may solicit the support of internal or external auditors, and internal and external resources with knowledge of the applicable Laws and/or regulations and required policies, procedures or standards that relate to the specific issue in question. All persons and entities involved in an investigation shall function under the direction of the Compliance Officer or legal counsel and shall be required to submit relevant evidence, notes, findings and conclusions to either the Compliance Officer or legal counsel.

The Compliance Officer will then work under the supervision and direction of legal counsel, as necessary, to conduct an inquiry and take all necessary and appropriate actions including designing and coordinating internal investigations and documenting, reporting, coordinating, and pursuing any resulting corrective action with all internal departments, contractors and the State and federal payers. Cooperation from all Affected Individuals is mandatory in such inquiries. The cooperation of the reporting individual may be sought during any investigation.

The objective of such an inquiry will be to determine whether, first, a compliance issue exists or if there has been a violation of the Compliance Program or applicable Laws. The Compliance Officer shall identify individuals who may have knowledge of the facts surrounding the reported conduct and/or who were involved in the conduct which led to the report. The investigative techniques used shall be implemented in order to facilitate the correction of any practices not in compliance with applicable Laws and/or regulations and to promote, where necessary, the development and implementation of policies and procedures to ensure future compliance. The investigative techniques used shall be designed to protect the integrity of the investigative process, as well as the integrity of TCCNY in the event of civil or criminal enforcement actions.

If an issue or violation does exist, then the investigation will attempt to determine its cause, so that appropriate and effective corrective action can be instituted. Steps to be followed in undertaking the investigation shall include, at a minimum:

- Notification of the chief executive and Governing Body by the Compliance Officer of the nature of the complaint;
- All complaints shall be investigated as soon as reasonably possible; and
- The scope and process used during the investigation shall be determined by the Compliance Officer, the Governing Body and/or by legal counsel.

Any investigation shall include, but need not be limited to:

- If known, an interview of the reporting individual and other persons who may have knowledge of the alleged problem or process and a review of the applicable Laws and/or regulations which might be relevant to, or provide guidance with respect to, the appropriateness or inappropriateness of the activity in question, to determine whether or not a problem actually exists; and

- Interviews of the person or persons who appeared to play a role in the process in which the problem exists. The purpose of the interview will be to determine the facts related to the reported activity.

Any concerns about the Compliance Officer, the Compliance Committee members or the Committee's actions or determinations may be brought directly to the Governing Body.

2. Corrective Action and Responses to Suspected Violations. Whenever a compliance problem is uncovered, regardless of the source, the Compliance Officer will ensure that appropriate and effective corrective action is implemented. The Compliance Officer will work in consultation with the Compliance Committee, the Governing Body, and legal counsel, 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 of reoccurrence) and be based on an analysis of the root cause of the problem. The corrective action plan should include, whenever applicable, a follow-up review of the effectiveness of the corrective action following its implementation, and an update to any compliance policies and procedures as necessary. If such a follow-up review establishes that the corrective action plan has not been effective, then additional or new corrective actions must be implemented. Corrective actions may include, but are not limited to, the following:

- a. Creating new compliance or business procedures, or modifying and improving existing procedures, to ensure that similar errors will not reoccur;
- b. Informing and discussing with the offending individuals both the violation and how it should be avoided in the future;
- c. Working with Affected Individuals to modify or correct procedures and practices;
- d. Providing remedial training and education (formal or informal) to ensure that Affected Individuals comprehend the applicable rules and regulations, existing procedures or policies, and any new or modified procedures that may have been instituted;
- e. Conducting a follow-up review to ensure that any corrective action instituted has been effective and that the problem is not recurring;
- f. Refunding and/or recouping any overpayments;
- g. Disciplining the offending Affected Individuals, if necessary and as appropriate; and
- h. Timely self-disclosure and repayment to an appropriate governmental agency or other payer.

3. Discipline and Corrective Action. All Affected Individuals are expected to adhere to this

Compliance Program. If the responses to violations instituted by the Compliance Officer, as outlined above, are inadequate to correct a pattern of non-compliance, and if the Compliance Officer concludes that a violation of the Compliance Program has occurred, appropriate discipline and/or corrective action, including termination or exclusion from TCCNY may be imposed. The Compliance Officer will report all such matters to the Compliance Committee, which will be responsible for recommending appropriate action.

The imposition of disciplinary or corrective action should be based on the Affected Individuals' misconduct, condoning unlawful actions by others, retaliation against those who report suspected wrongdoing, or other violations of the Compliance Program. Discipline will be fairly and consistently administered across all departments in the organization and at all levels, with escalating disciplinary action taken in response to non-compliance, with intentional or reckless behavior being subject to more significant sanctions. Disciplinary or corrective action may result for instances where Affected Individuals:

- a. Fail to report suspected problems or violations, including instances where Affected Individuals should have known about a policy violation;
- b. Participate in non-compliant behavior;
- c. Encourage, direct, facilitate, or permit, either actively or passively, non-compliant, unlawful, and/or unethical behavior in connection with TCCNY's operations;
- d. Fail to perform any obligation or duty relating to compliance with the Compliance Program or applicable Laws or regulations;
- e. Fail as supervisors, officers, directors, executives, and/or Governing Body members to correct foreseeable compliance violations of subordinates;
- f. Refuse to cooperate with an investigation conducted by TCCNY;
- g. Intimidate or retaliate against an individual that reported a compliance violation or participated in a compliance investigation;
- h. Intentionally make false compliance reports or report in bad faith; or
- i. Violate the Compliance Program.

Every violation will be considered on a case-by-case basis to determine the appropriate sanction. Disciplinary or corrective actions for violations shall be fairly and firmly enforced and will be administered in an appropriate and consistent manner. Disciplinary and/or corrective action may include, without limitation, one or more of the following:

- a. Coaching and/or verbal counseling;
- b. Issuing an oral or written warning;

- c. Entering into and monitoring a corrective action plan. The corrective action plan may include requirements for individual or group remedial education and training, consultation, proctoring and/or concurrent review;
- d. Probation for a specified period;
- e. Modification of assigned duties; or
- f. Immediate exclusion and/or immediate termination from TCCNY.

To the extent that providers and staff members are employed by TCCNY under a collective bargaining agreement, they shall have the right to grieve and to arbitrate any discipline imposed on them relating to violations of the TCCNY's Compliance Program, Code of Conduct and the accompanying policies and procedures.

4. Corrective Action Following Compliance Audits. As set forth below, TCCNY will conduct on an at least an annual basis, internal compliance assurance reviews or audits and external audits as necessary. Should such an internal audit identify non-compliance, TCCNY may, in its sole discretion, recommend remediation and conduct follow-up audits.

If the results of the follow-up audit reflect that an Affected Individual is still not in compliance with the Compliance Program or applicable rules, regulations, or Laws, then TCCNY may require participation in additional remedial training and education sessions and/or additional audits, as necessary. Further, non-compliance after an audit may result in additional discipline or corrective action being imposed.

C. COMPLIANCE ASSURANCE MONITORING AND TRAINING

TCCNY is committed to the effective monitoring of compliance through its policies, procedures, and applicable Laws. The Compliance Officer and the Compliance Committee will also be responsible for continued monitoring and auditing of compliance with this Compliance Program and with all applicable federal and state rules, Laws, and regulations. Procedures for routine monitoring and auditing include both initial testing for compliance, then validation of correction, and ongoing compliance performance. Education and training shall be provided to all Affected Individuals as deemed appropriated by TCCNY.

1. Tracking New Developments. On a continuing basis, the Compliance Officer and the Compliance Committee will review and be knowledgeable concerning all new regulatory or legal requirements applicable to TCCNY's operations.

In light of new developments, the Compliance Officer, in conjunction with the Compliance Committee, will review existing policies and procedures to ensure that TCCNY is compliant with the requirements of federal and state Laws. If necessary, the Compliance Officer and Compliance Committee will work to ensure that appropriate updates and corrective action is taken.

2. **Ongoing Monitoring & Auditing.** The Compliance Committee and the Compliance Officer will develop an annual auditing and monitoring work plan (the “Work Plan”) that, at minimum, addresses risk areas applicable to TCCNY’s operations. This Work Plan will be used to identify potential risks, to prioritize and develop monitoring plans, and to initiate and implement reviews throughout the applicable period. These reviews will help ensure that all Affected Individuals are compliant with the applicable requirements of federal and state regulations, as well as TCCNY’s policies and procedures. The monitoring reviews will also assist in the evaluation of the effectiveness of the Compliance Program, including the review of education and training, the reporting mechanisms, investigations, record retention, and oversight activities. Audits will be conducted by independent internal or external auditors and will be overseen by the Compliance Officer.

Auditing may be conducted utilizing a variety of methods and techniques including, but not limited to:

- a. Reviewing claim reports;
- b. Analyzing patterns and trend analyses; and
- c. Random sampling.

If problem areas are identified, it will be determined whether a focused review should be conducted on a more frequent basis. If any areas are identified that require further training and education of Affected Individuals or dissemination of additional information these areas will be incorporated into the training and education program.

The results of the ongoing monitoring and auditing reviews will be summarized in a standardized reporting package on an audit report form that is provided to the Compliance Committee and the Governing Body on at least an annual basis, as appropriate. Any deficiencies noted may require the submission, for compliance approval, of a Corrective Action Plan (CAP) which provides how the deficiency will be addressed timely and brought to resolution. Ongoing monitoring of the progress of the CAP implementation shall be monitored by the Compliance Officer or designee. Timely updates of progress made and/or challenges to bringing deficiencies to a resolution are provided to the Compliance Committee and the Governing Body as needed and on a periodic basis.

TCCNY will:

- a. Review TCCNY’s standards and procedures to ensure that they are current, complete and accurate. If the standards and procedures are found to be ineffective or outdated, they should be updated to reflect changes in the Law;
- b. Conduct audits of TCCNY’s risk areas to identify areas of potential risk and to measure progress against the baseline audit results;
- c. Review relationships and contractual arrangements with third party vendors, suppliers

and contractors; and

- d. Periodically evaluate the nature, extent and frequency of its auditing activities in order to determine if modification of such practices is warranted based on factors including, but not limited to, identified risk areas, trends in internal reporting, and available resources.

3. Routine Risk Assessments. The Compliance Officer, the Compliance Committee, or a designee, is required to conduct risk assessments at least annually and prioritize the results according to identified risk. The Compliance Officer determines which risk areas will most likely affect regulatory compliance, as well as the compliance of TCCNY with its internal policies and procedures. The risk assessment takes into account:

- a. Program areas identified by the OIG and OMIG annual work plans to the extent applicable to TCCNY;
- b. Other published reports or white papers identifying potential risks;
- c. Results of prior internal monitoring reviews or ongoing audits; and
- d. Results of reviews and advisory opinions by regulatory agencies.

4. Monitoring Confidentiality of Protected Information. The Compliance Officer and the Compliance Committee are responsible for ensuring that risk assessments occur at least annually, to identify potential risks specific to it and as related to federal and state privacy and security Laws, rules, and regulations.

The Compliance Officer, or a designee, will use professional judgment to list risks related to regulatory changes, internal investigations, complaints, and areas of high exposure to protected health information in order to document such risks. The Compliance Officer will use his/her expertise to prioritize the risk and develop an appropriate action plan.

The Compliance Officer, or a designee, will compile the individually identified risks into a master document to serve as the risk analysis and to develop actionable steps and timelines for creation of a work plan to effectuate the risk analysis. Work plans will be prioritized, implemented, and evaluated on an ongoing basis. Risk assessment reports will be provided to the Compliance Committee, and escalated to the Governing Body, as appropriate, on an ongoing basis.

5. Compliance Training. The Compliance Officer shall ensure that TCCNY implements training and education concerning TCCNY's Compliance Plan, Program and related policies and procedures.

All training activities will be appropriately documented and may be conducted through in- service training sessions or provided by outside resources. Failure to comply with training requirements may result in disciplinary action up to and including termination or exclusion. In addition to periodic training and in-service programs, the Compliance Officer will disseminate any relevant new compliance information to Affected Individuals. Such information may include, but is not limited to, fraud alerts, advisory opinions, newsletters and bulletins.

a) **Initial Compliance Training.** Upon hiring or engagement, all Affected Individuals will participate in a formal compliance education and training session as to the scope

and requirements of TCCNY's Compliance Program. The Code of Conduct shall be reviewed with new Affected Individuals, irrespective of responsibilities and all new employees, Governing Body members, and Affected Individuals shall be required to sign and date a statement that reflects his or her knowledge of, and commitment to, the standards of conduct.

b) **Periodic Training.** All Affected Individuals associated with TCCNY are required as a condition of employment and continued relationship with TCCNY, to attend periodic compliance training as directed by the Compliance Officer on at least an annual basis. Additional training attendance may be required as part of an individual's performance improvement measure or action plan or for particular groups of personnel who require specific training seminars and in response to any identified risk areas specific to TCCNY. As part of its continued commitment to compliance with legal requirements, TCCNY will implement mandatory annual Compliance Program training. Training topics shall include, but are not limited to:

- The Code of Conduct and Compliance Policies;
- TCCNY's policies and procedures;
- Record maintenance and reporting;
- Fraud and abuse;
- Compliance reporting requirements; and
- Privacy and security of confidential information and data.

c) **Supplemental Training.** Finally, the Compliance Officer will be responsible for implementing any remedial education and training that is required as part of the Compliance Program. Additional educational and training programs will also be developed for specific individuals or groups based upon job functions or identified compliance issues and risk areas.

d) **Contractor Training.** Contractors are to receive training to the extent that such contractors are affected by the required provider's risk areas and only within the scope of the contracted authority and affected risk areas.

6. **Compliance Assurance Reviews.** The Compliance Officer and the Compliance Committee will also ensure that compliance assurance reviews are conducted on a regular basis. These reviews may include, but are not necessarily limited to, the following:

a) **Review of Reimbursement for Claim Payments.** At least annually, the Compliance Officer will request reviews to be conducted on TCCNY's practices concerning the reimbursement for claim payments. These reviews will be conducted either by an outside consultant or other designee. These reviews will focus on and emphasize:

- The accuracy and appropriateness of claim data;
- Compliance with the procedures set forth in the Compliance Program, or other TCCNY policies and procedures; and

- Compliance with all applicable federal or state Laws, rules and regulations.

If the reviewer identifies any documentation issues, he or she will inform the Compliance Officer of the results of the review. A meeting will then be scheduled by the Compliance Officer to discuss and resolve the issue. If the reviewer identifies a pattern of deficient or problematic compliance practices, the Compliance Officer will inform the Compliance Committee and the Governing Body and further corrective action will be taken.

b) Review of Compliance Issues. In conjunction with the Compliance Committee, the Compliance Officer will ensure that reviews are conducted on a regular basis as to any particular compliance issue, which has been identified as being potentially problematic and could indicate a pattern of violations that might uncover broader compliance issues. As necessary, these reviews will be conducted internally by the Compliance Officer, or a designee. The Compliance Officer will keep track of compliance complaints in a “complaint log” to determine whether such complaints reflect the existence of possible patterns of compliance issues. The “complaint log” will be provided to the Compliance Committee periodically and upon request in order to address applicable issues.

c) Review of Complaints. The Compliance Officer will keep track of compliance complaints in a “complaint log” to determine whether such complaints reflect the existence of possible patterns of compliance issues. The “complaint log” will be provided to the Compliance Committee periodically and upon request in order to address applicable issues.

d) Review of Exclusion Lists. Contracting with individuals or entities that have been excluded from federal and/or state program reimbursement is prohibited. The Compliance Officer will oversee periodic checks for exclusion from participation in federal or state health care programs. The check shall also include sanctions by the federal or state governments or applicable licensing board. This shall be accomplished by monthly monitoring of the General Service Administration’s Excluded Parties List System (EPLS), the OIG List of Excluded Individuals/Entities (LEIE), the OMIG List of Restricted, Terminated or Excluded Individuals or Entities and other applicable sources prior to hiring, engaging or otherwise transacting business and conducting such review periodically thereafter.

If any exclusion is found, the Compliance Officer should be immediately contacted. TCCNY may not employ, contract, or otherwise enter into a business arrangement, in any capacity with an individual or entity barred or excluded from participating in any federal or state health care program (e.g., Medicare or Medicaid).

e) Suspensions. Should it come to the attention of TCCNY that an Affected Individual is currently under investigation or charged with a health care-related crime, pending the resolution of such charges or proposed debarment or exclusion that Affected Individual will be subject to suspension or termination. TCCNY reserves the right to suspend or terminate such Affected Individuals from its business relationship with TCCNY, in its sole discretion.

f) Responses to Reviews. If any of the reviews outlined above indicate that possible compliance issues exist, the Compliance Officer will work with the Compliance Committee to

ensure that an appropriate inquiry and corrective action are implemented, as provided above.

7. Compliance with Local, State, and Federal Rules and Regulations. It is the policy of TCCNY to comply with all local, state, and federal rules and regulations regarding TCCNY's operations. Affected Individuals are strictly prohibited from engaging in any activity that is fraudulent or abusive in connection with TCCNY. A suspected violation of local, state, and federal rules and regulations and/or TCCNY's policies is required to be reported to the Compliance Officer.

8. Fraud and Abuse. It is the obligation of TCCNY to prevent and detect any fraud, waste, and abuse in relation to TCCNY's operations. To this end, TCCNY maintains a vigorous Compliance Program and strives to educate Affected Individuals regarding the importance of submitting accurate performance data and reports to TCCNY as well as the requirements of federal and state Laws governing TCCNY's operation.

TCCNY strictly prohibits submission of any false information, report or data in connection with payments made under any federal, state or private health care programs. For purposes of the Compliance Program, "fraud" is the intentional deception or misrepresentation that an individual or entity knows to be false or does not believe to be true and makes, knowing that the deception could result in some unauthorized benefit to that individual, entity or some other person. "Abuse" is a practice that, either directly or indirectly, results in unnecessary costs or payments. Abuse includes any practice that is inconsistent with the goals of TCCNY. The following are some examples of actions which may be considered fraudulent:

- Providing incomplete, false, or misleading information;
- Falsifying clinical and/or business records;
- Misrepresenting services performed or costs incurred; and
- Altering or manipulating reports or data to increase claim payments.

It is the policy of TCCNY to prevent fraud and abuse in connection with TCCNY's operations. The Compliance Officer, in conjunction with the Compliance Committee, is responsible for ensuring that guidance regarding fraud and abuse is included in the mandatory compliance training of all Affected Individuals. Affected Individuals who submit or cause a false report to be submitted may be subject to penalties, up to and including, termination or exclusion.

APPENDIX A

2024 UPDATES TO COMPLIANCE PROCEDURES

**THE CHILD CENTER OF NY, INC.
FALSE CLAIMS LAWS POLICY**

SUBJECT: SUMMARY OF FEDERAL AND STATE FALSE CLAIMS LAWS

OWNER: LEGAL & COMPLIANCE DEPARTMENT

EFFECTIVE: MAY 2024

REVIEW/REVISED: MAY 2024

REFERENCE: 31 USC § 3729 *et seq.*; 42 USC § 1320a-7a(a); 31 USC § 3730 *et seq.*; 31 USC

§§ 3801, 3802; NY Finance Law § 39 Article 13 187-194; 2007-2008 NY State Legislature S. 2108-C; NY Social Services Law § 145-b; NY Social Services Law § 366-b; NY Penal Law Article 177; NY Labor Law § 740*et seq.*; 2 CFR §200.1132, 2 CFR § 200 *et seq.*, 2 CFR part 180, 31

U.S.C. 3321, and 41 U.S.C. 2313

Policy:

It is the policy of The Child Center of New York (“TCCNY”) that all Affected Individuals, including medical staff, consultants and agents who provide health care services or perform billing and coding functions, shall comply with all applicable Federal and New York State false claims laws and regulations. TCCNY has instituted various policies and procedures to ensure compliance with these laws and to assist TCCNY in preventing fraud, waste and abuse in Federal health care programs. As part of TCCNY’s Compliance Program, Affected Individuals shall receive training on these laws, which are summarized below, and should consult with the Compliance Officer if they have questions about the application of these laws to their job.

This policy applies to all TCCNY programs that bill medical services to public and private payors.

I. FEDERAL LAWS

A. The Federal False Claims Act¹

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

1) 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 [the above violations]; . . . or (G) knowingly

¹ 31 USC § 3729 *et seq.*

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 \$11,665 and not more than \$23,331,² plus 3 times the amount of damages which the Government sustains because of the act of that person

(b) 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; and
- (2) the term “claim” (A) means any request or demand, whether under a contract or otherwise, for money or property and whether or not the United States has title to the money or property, that-- (i) is presented to an officer, employee, or agent of the United States; or (ii) is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the Government’s behalf or to advance a Government program or interest, and if the United States Government (I) provides or has provided any portion of the money or property requested or demanded; or (II) will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded; and
- (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.

While the False Claims Act imposes liability only when the claimant acts “knowingly,” it does not require that the person submitting the claim have actual knowledge that the claim is false. A person, who acts in reckless disregard or in deliberate ignorance of the truth or falsity of the information, also can be found liable under the Act. 31 U.S.C. 3729(b).

In sum, the False Claims Act imposes liability on any person who submits a claim to the federal government or a contractor of the federal government that he or she knows (or should know) is false. An example may be a physician who submits a bill to Medicare for medical services she knows she has not provided. The False Claims Act also imposes liability on an individual who may knowingly submit a false record in order to obtain payment from the government. An example of this may include a government contractor who submits records that he knows (or should know) is false and that indicate compliance with certain contractual or regulatory requirements. The third area of liability includes those instances in which someone may obtain money from the federal government to which he may not be entitled, and then uses false statements or records in order to retain the money. An example of this so-called “reverse false claim” may include a healthcare facility that obtains interim payments from Medicare throughout the year, and then knowingly files a false cost report at the end of the year in order to avoid making a refund to the Medicare or Medicaid program.

² Although the statutory provisions of the False Claims Act authorizes a range of penalties of from between \$5,000 and \$10,000, those amounts have been adjusted for inflation and increased by regulation to not less than \$11,665 and not more than \$23,331. 28 *CFR* §85.3(a) (9).

In addition to its substantive provisions, the FCA provides that private parties may bring an action on behalf of the United States. 31 U.S.C. 3730 (b). These private parties, known as “qui tam relators,” may share in a percentage of the proceeds from an FCA action or settlement.

Section 3730(d)(1) of the FCA provides, with some exceptions, that a qui tam relator, when the government has intervened in the lawsuit, shall receive at least 15 percent but not more than 25 percent of the proceeds of the FCA action depending upon the extent to which the relator substantially contributed to the prosecution of the action. When the government does not intervene, section 3730(d) (2) provides that the relator shall receive an amount that the court decides is reasonable and shall be not less than 25 percent and not more than 30 percent.

B. The Program Fraud Civil Remedies Act (“PFCRA”)³

This statute allows for administrative recoveries by federal agencies. If a person submits a claim that the person knows is false or contains false information, or omits material information, then the agency receiving the claim may impose a penalty of up to \$5,000 for each claim. The agency may also recover twice the amount of the claim.

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

C. Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards⁴

Section 2 CFR §200.113 Mandatory Disclosures of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards provides that:

Any non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures can result in sanctions including suspension or debarment.

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 healthcare 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 and will be listed in this section.

A. Civil and Administrative Laws

1. New York False Claims Act

The New York False Claims Act is similar to the Federal False Claims Act. It imposes penalties and fines upon 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

³ 31 USC §§ 3801, 3802.

⁴ 2 CFR §200.1132, 2 CFR § 200 *et seq.*, 2 CFR part 180, 31 U.S.C. 3321, and 41 U.S.C. 2313

entity will be liable in those instances in which the person obtains money from a state or local government to which he may not be entitled, and then uses false statements or records in order to retain the money.

The penalty for filing a false claim is six to twelve thousand dollars 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 Act allows private individuals to file lawsuits in state court, just as if they were state or local government parties, subject to various possible limitations imposed by the NYS Attorney General or a local government. If the suit eventually concludes with payments back to the government, the person who started the case can recover twenty-five to thirty percent of the proceeds if the government did not participate in the suit, or fifteen to twenty-five percent if the government did participate in the suit.

2. Social Services Law, Section 145-b - False Statements

It is a violation to knowingly obtain or attempt to obtain payment for items or services furnished under any Social Services program, including Medicaid, by use of a false statement, deliberate concealment or other fraudulent scheme or device. The State or the local Social Services district may recover three times the amount incorrectly paid. In addition, the Department of Health may impose a civil penalty of no less than \$6,000 and up to \$12,000 per violation. If repeat violations occur within 5 years, a penalty up to \$30,000 per violation may be imposed if they 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 the purpose of determining his or her needs or that of his family for six months if a first offense, for twelve months if a second offense (or if benefits wrongfully received are at least one thousand dollars but not more than three thousand nine hundred dollars), for eighteen months if a third offense (or if benefits wrongfully received are in excess of three thousand nine hundred dollars), 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

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

- a. Insurance Fraud in the 5th degree involves intentionally filing a health insurance claim knowing that it is false. It is a Class A misdemeanor.
- b. Insurance fraud in the 4th degree is filing a false insurance claim for over \$1,000. It is a

Class E felony.

- c. Insurance fraud in the 3rd degree is filing a false insurance claim for over \$3,000. It is a Class D felony.
- d. Insurance fraud in the 2nd degree is filing a false insurance claim for over \$50,000. It is a Class C felony.
- e. Insurance fraud in the 1st degree is filing a false insurance claim for over \$1 million. It is a Class B felony.
- f. Aggravated insurance fraud is committing insurance fraud more than once. It is a Class D felony.

6. Penal Law Article 177 -- Health Care Fraud

This statute, enacted in 2006, applies to health care fraud crimes. It was designed to address the specific conduct by health care providers who defraud the system including any publicly or privately funded health insurance or managed care plan or contract, under which any health care item or service is provided. Medicaid is considered to be a single health plan under this statute. This law primarily applies to claims by providers for insurance payment, including Medicaid payment, and it includes five crimes:

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

III. WHISTLEBLOWER PROTECTIONS

A. Federal False Claims Act ("FCA") (31 U.S.C. §3730[h])

The FCA provides protection to any employee, contractor, or agent who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of their employment as a result of their lawful acts in furtherance of an action under the FCA. Remedies include reinstatement with comparable seniority as the employee, contractor, or agent 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. Pilot Program for Enhancement of Employee Whistleblower Protections (41 U.S.C. § 4712)

This statute applies to all employees working for contractors, grantees, subcontractors and subgrantees of Federal contracts and grants. It provides protections for employees who disclose information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a specific danger to public health or safety, or a violation of law, rule, or regulations related to a Federal contract or grant. The statute

provides that employees who make such disclosures may not be discharged, demoted or otherwise discriminated against if the disclosure is made to one of the following:

- A member of Congress or a representative of a committee of Congress
- An Inspector General
- The Government Accountability Office
- A Federal employee responsible for contract or grant oversight or management at the relevant agency
- An authorized official of the Department of Justice or other law enforcement agency
- A court or grand jury
- A management official or other employee of the contractor, subcontractor, or grantee who has responsibility to investigate, discover, or address misconduct.

Any employee who believes he or she has been subjected to retaliation as stated above may submit a complaint to the Inspector General of the governmental agency involved. The employee will have all rights and remedies afforded by Federal law.

C. New York State False Claim Act (State Finance Law §191)

The New York State False Claim 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.

D. New York Labor Law §740

An employer may not take any retaliatory action against an employee, a former employee, or an independent contractor (collectively "whistleblowers") if the whistleblower makes a protected disclosure of information about the employer's policies, practices or activities to a supervisor or any of the following entities ("public bodies"): the United States Congress, any state legislature, or any elected local governmental body, or any member or employee thereof; any federal, state, or local court, or any member or employee thereof, or any grand or petit jury; any federal, state, or local regulatory, administrative, or public agency or authority, or instrumentality thereof; any federal, state, or local law enforcement agency, prosecutorial office, or police or peace officer; any federal, state or local department of an executive branch of government; or any division,

board, bureau, office, committee or commission of any public bodies.

An employer cannot retaliate against: an individual who discloses or threatens to disclose, an actual violation of law, rule, or regulation; or an individual who had a reasonable belief that the employer committed a violation of law, rule, or regulation.

“Retaliatory action” means an adverse action taken by an employer or their agent to discharge, threaten, penalize, or in any other manner discriminate against any employee or former employee exercising their rights under this section, including (i) adverse employment actions or threats to take such adverse employment actions against an employee in the terms of conditions of employment including but not limited to discharge, suspension, or demotion; (ii) actions or threats to take such actions that would adversely impact a former employee’s current or future

employment; or (iii) threatening to contact or contacting United States immigration authorities or otherwise reporting or threatening to report an employee’s suspected citizenship or immigration status or the suspected citizenship or immigration status of an employee’s family or household member.

Protected disclosures are those where the whistleblower acts on a reasonable belief that either a violation of a law, rule, or regulation—including executive orders and any judicial or administrative decision, ruling or order, has occurred, or where there is a substantial and specific danger to the public health and safety inherent in the employer’s policies, practices or activities. The whistleblower’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, except in situations where: (a) there is an imminent and serious danger to the public health or safety; (b) the employee reasonably believes that reporting to the supervisor would result in a destruction of evidence or other concealment of the activity, policy or practice; (c) such activity, policy or practice could reasonably be expected to lead to endangering the welfare of a minor; (d) the employee reasonably believes that reporting to the supervisor would result in physical harm to the employee or any other person; or (e) the employee reasonably believes that the supervisor is already aware of the activity, policy or practice and will not correct such activity, policy or practice.

A whistleblower who has been the subject of a retaliatory personnel action in violation of this section may institute a civil action in a court of competent jurisdiction for relief.

TCCNY’s Whistleblower Policy, which comports with the provisions of Labor Law Section 740, can be found in the TCCNY Employee Handbook.

E. New York Labor Law §741

A health care employer may not take retaliatory action against an employee because the employee does any of the following: (a) discloses or threatens to disclose to a supervisor, to a public body, to a news media outlet, or to a social media forum available to the public at large, an activity, policy or practice of the employer or agent that the employee, in good faith, reasonably believes constitutes improper quality of patient care or improper quality of workplace safety; or (b) objects to, or refuses to participate in any activity, policy or practice of the employer or agent that the employee, in good faith, reasonably believes constitutes improper quality of patient care or improper quality of workplace safety.

Retaliatory action means discharge, suspension, demotion, penalization or discrimination against an employee, or other adverse employment action taken against an employee in the terms and conditions of employment. If personnel actions taken by the employer against a whistleblower are predicated on grounds

other than the whistleblower's protected disclosure and/or objection or refusal to participate in any policies, practices or activities, a court may determine that those personnel actions would not be considered as retaliatory in nature.

Protected disclosures are those that an employee assert that, in good faith, the employee has a reasonable belief that the employer's policies practices or activities constitute improper quality of patient care or improper quality of workplace safety. The employee's disclosure is protected only if the employee first brought the improper quality of patient care or improper quality of workplace safety to the attention of a supervisor and has afforded the employer a reasonable opportunity to correct such activity, policy or practice, unless the improper quality of patient care or improper quality of workplace safety described therein presents an imminent threat to public health or safety or to the health of a specific patient or specific health care employee and the employee reasonably believes in good faith that reporting to a supervisor would not result in corrective action.

A health care employee who has been the subject of a retaliatory personnel action may seek enforcement of this law by instituting a civil action in a court of competent jurisdiction for relief.

TCCNY's Whistleblower Policy, which comports with the provisions of Labor Law Section 741, can be found in the TCCNY Employee Handbook.

Responsibility:

TCCNY Legal & Compliance Department