Corporate Compliance Plan

Table of Contents

INTRODUCTION

Ahivim, Inc. ("Ahivim" or "the organization") is committed to conducting its activities in compliance with all federal, state and local laws and regulations, and conforming to the highest standards of ethics and business integrity at all times. As a provider of OPWDD and HCBS children's and adult services in New York State (NYS), Ahivim is committed to preventing and detecting healthcare fraud and abuse within the organization and to upholding the integrity of the NYS Medicaid program.

To that end, Ahivim has developed this Corporate Compliance Program (hereinafter referred to as the "compliance program" or "compliance plan"). Mandatory provider compliance programs are established by New York State Social Services Law § 363-d and 18 NYCRR Part 521, as revised.

This Compliance Program contains the Ahivim, Inc. Compliance Plan and related policies and procedures. The Compliance Program describes the compliance expectations of Ahivim, Inc. ("Ahivim" or "we"), as embodied in a Code of Conduct, implements the operation of the Compliance Program, provides guidance to all persons associated with Ahivim ("Affected Persons" herein defined to include all employees, the chief executive, senior administrators, managers, the Board of Directors, corporate officers, contractors, subcontractors, independent contractors, agents, volunteers and others associated with Ahivim) on dealing with potential compliance issues, identifies how to communicate compliance issues to appropriate compliance personnel, and describes how potential compliance problems are investigated and resolved. All affected persons are expected to abide by the organization's Code of Conduct and the policies & procedures outlined in this manual.

The compliance program pertains to the following organizational functions which have been identified as "risk areas":

- *Billings*
- *Payments*
- *Medical necessity*
- *Quality of care*
- *Governance*
- *Mandatory reporting*
- *Credentialing*
- *Oversight of contractors, subcontractors and independent contractors*

Any questions or concerns regarding the interpretation or application of laws and regulations should be referred to the Compliance Officer.

Section 1: Compliance Standards and Policies

These written policies and procedures implement the operation of the Compliance Program, provide guidance on dealing with potential compliance issues, identify how to communicate compliance issues to Affected Persons, describe how Ahivim investigates and resolves potential compliance issues, and sets forth the standards of conduct that Ahivim expects its Affected Persons to follow.

1.1 Ahivim, Inc. Code of Conduct

1. We are committed to ongoing compliance with the requirements of New York State's Medicaid ("Medicaid") program, including but not limited to the requirements of Medicaid Managed Care organizations with which we participate. We also participate in the Medicaid Fee-for-Service program.

2. We expect and require all Affected Persons to comply with these policies and procedures and with the requirements of the Medicaid program.

3. We expect and require all Affected Persons to report to the Compliance Officer any suspected illegal activity, violations of this Compliance Program, or violations of the requirements of the Medicaid program.

4. We may take disciplinary action, as appropriate, for failure to comply with the applicable requirements of the Medicaid program or this Compliance Program. Disciplinary policies will be fairly and firmly enforced and may include suspension or termination if warranted.

5. We will not take or permit retaliation in any form against an individual who in good faith makes a report of suspected illegal activity, violations of this Compliance Program, or violations of the requirements of the Medicaid program by Ahivim or by any Affected Person.

1.2 Compliance with Laws and Regulations

1. It is the policy and expectation of Ahivim, Inc. and its employees, senior managers, contractors and agents to obey federal and state law and to strive to prevent and eliminate waste, fraud and abuse with respect to payments to Ahivim from federal or state programs providing payment for patient care.
2. As a Medicaid contracted provider, Ahivim will comply with all laws and regulations pertaining to providers of the NYS Medicaid program. These can be found in Title 18 of the New York Codes, Rules and Regulations (NYCRR), specifically Chapters 504.3, 504.8, and 514 through 520. Ahivim will likewise abide by all NYS and Medicaid regulations pertaining to the provision and reimbursement of OPWDD and HCBS services to Medicaid recipients. Regulations that regulate Ahivim's services are:
    a. OPWDD regulations are found in Section 14 of the New York Codes, Rules and Regulations (NYCRR). These regulations are governed by the applicable sections of New York Mental Hygiene Law.

    b. HCBS Waiver services are governed by §1915(C) of the Social Security Act
3. Ahivim is required by law to distribute detailed information on federal and state laws governing false claims, their civil and criminal liabilities, penalties, administrative sanctions and whistleblower protections. This requirement applies to all employees, management, contractors and agents of the organization. Information about applicable state and federal laws shall be distributed to all current and new employees and to all current and future contractors of Ahivim Behavior Care. This policy is included as an addendum to this compliance plan, and in Ahivim's employee handbook. This policy includes the following information concerning the tools federal and state agencies and individuals use to fight fraud, waste and abuse in the administration of federal and state health programs:
    a. A summary of the Federal False Claims Act
    b. A summary of administrative remedies found in the Program Fraud Civil Remedies Act
    c. A summary of laws of the state of New York that impose civil or criminal penalties for false claims or statements
    d. A summary of protections for employees (whistleblowers) who report suspected violations of these federal and state laws.
    e. The role of such laws in preventing and detecting fraud, waste, and abuse in federal and state health care programs

The detailed description of these laws appears in the appendix to this Corporate Compliance Plan.

1.3 Non-Retaliation/Non-Discrimination Policy

1. Retaliation in any form against an individual who in good faith participates in the Compliance Program, including but not limited to reporting potential issues, investigating issues, self-evaluations, audits, and remedial actions, is prohibited.
2. Any person with a concern regarding possible intimidation or retaliation should report the matter to the Compliance Officer, or to his or her supervisor, or to Chevy Frankel, the Executive Director of Ahivim and the Compliance Officer's supervisor.
3. The Compliance Officer will promptly investigate or direct an investigation of the matter in accordance with the policies and procedures described above.
4. If the Compliance Officer determines that the employee or other representative knowingly fabricated, distorted, exaggerated, or minimized a report of misconduct to injure someone else or to protect himself or herself, the employee or other representative will be subject to disciplinary action up to and including discharge or termination of services.
5. Policy of Protecting Individuals Involved in Good Faith in Reporting Potential Issues, Investigating Issues, Self-Evaluations, Audits, Remedial Actions, and Reporting to Appropriate Officials As Provided in Labor Law §§ 740 and 741: Ahivim will protect

individuals involved in the good faith reporting of potential issues, investigating issues, self-evaluations, audits, remedial actions, and reporting to appropriate officials as provided in New York State Finance Law § 191 and New York State Labor Law §§740 and 741.

6. Additional details regarding the laws protecting whistleblowers from retaliation appear in the appendix to this compliance plan and may be obtained by visiting the New York State Department of Labor website at https://www.whistleblowers.gov/.

1.4 Screening of Affected Individuals

1. Applicants for positions requiring specific credentials and/or licensure (e.g. social workers, other mental health professionals) are required to provide verification of up-to-date credentials and/or licenses.
2. The Human Resources department is responsible for ensuring that the exclusion status of affected persons is checked upon hire/initial contract and every thirty days thereafter.
3. The following databases are checked:
    a. The New York State OMIG Exclusion List
    b. The Health and Human Services OIG List of Excluded Individuals (LEIE)

The results of exclusion screenings must be shared promptly with the Compliance Officer.

5. Ahivim personnel have the ongoing obligation to inform the Compliance Officer immediately of any changes in their driving record, criminal record, or any charge, offense, conviction, finding or plea which would disqualify them from continued employment at Ahivim under state or federal law. Supervisors must inform the Compliance Officer of any change reported.
6. Ahivim employs only persons who are legally authorized to work in the United States and requires newly hired employees to produce documentation proving their identity and employment eligibility.
7. Ahivim will abide by the federal laws which preclude providers from contracting with vendors, suppliers, and other businesses that have been excluded from the Medicare and/or Medicaid program.

1.5 Contractors, Agents, Subcontractors, Independent Contractors

1. Ahivim will ensure that contracts with contractors, agents, subcontractors and independent contractors specify that the contractor is subject to Ahivim's compliance program, to the extent that those contractors are affected by the organization's risk areas, and only within the parameters of the contracted activities in those risk areas.
2. Included is the requirement for contractors to check their employees and subcontractors who will be performing duties related to Ahivim's risk areas against the exclusion lists specified in 1.4 above.
3. Contracts will include termination provisions for contractors' failure to adhere to Ahivim's compliance program.

1.6 Protection of Confidential Information

1. All organization personnel are required to comply with the Health Insurance Portability & Accountability Act (HIPAA) as well as Ahivim policies on the confidentiality of organization information.
2. All organization records and information are confidential. Confidential information may not be released without proper authorization from senior management.
3. Any information about the health status, provision of health care, or payment for health care that is created or collected by the organization and can be linked to a specific individual is considered under U.S. law to be Protected Health Information (PHI) and is protected from disclosure under the HIPAA Privacy Rule. All personnel are required to take reasonable measures to protect the confidentiality of PHI.
4. Ahivim's "Notice of Privacy Practices" details the rights of Ahivim individuals with regard to their PHI and is provided to each individual upon admission to Ahivim for services. Ahivim employees should contact the Compliance Officer for clarification on any questions that arise regarding the permissibility of releasing individuals' PHI.
5. It is not permitted to openly discuss an individual's condition where others can hear or share information with those who are not directly involved in their care.
6. PHI that is stored or transmitted electronically is termed ePHI and is protected from disclosure under the HIPAA Security Rule, which requires the enactment of administrative, physical and technical safeguards to ensure the confidentiality, integrity and availability of such information.
7. Emails containing ePHI must be sent through an encrypted service.
8. Ahivim personnel may not share their system user name or password or allow any other person to access Ahivim's computer system with their password.
9. Ahivim only utilizes software systems hosted by vendors that have the administrative, physical and technical safeguards in place to comply with the HIPAA Security Rule. Questions concerning information security should be addressed to one's immediate supervisor or the Compliance Officer.
10. The retention, disposal or destruction of records of or pertaining to individuals served by Ahivim must always comply with legal and regulatory requirements and the organization's document retention policies.
11. Ahivim personnel may not destroy any records without express written approval of the Compliance Officer.

1.7 Process for Drafting, Revising and Approving Compliance Policies

1. The policies and procedures included in this manual comprise Ahivim's Corporate Compliance Program ("the compliance plan") and are the responsibility of the organization's compliance personnel to maintain, review, revise and distribute.

2. The Compliance Officer is responsible for conducting an annual assessment of compliance risks within the organization's identified risk areas, as well as an assessment of the compliance program's effectiveness.
3. Thereafter, these policies and procedures are reviewed to ascertain whether identified risks are adequately addressed within the compliance plan.
4. Relevant sections of the compliance plan may be reviewed more frequently any time a compliance breach is identified.
5. The results of such review and any recommended changes must be discussed with the compliance committee at the next quarterly meeting. The Executive Director or his/her designee must approve any changes to the compliance plan before they are finalized.
6. Dates of review, section(s) revised and the signature of the Executive Director or his/her designee are required before a change to the program is implemented.
7. The Compliance Officer, in consultation with the compliance committee, develops an annual work plan based on the results of the prior year's review and on any changes to state or federal law, or to any State or Medicaid regulations governing the provision of OPWDD or HCB services. The work plan outlines the organization's proposed strategy for meeting all the requirements of the compliance program.
8. The compliance plan in its entirety is available upon request from the Compliance Officer to all employees and other affected persons.
9. The Compliance Officer will maintain all previous versions of the compliance plan, along with documentation that demonstrates its adoption, implementation and operation, for a period of six (6) years.

Section 2: Compliance Personnel

2.1 Appointment of the Compliance Officer

1. The Board of Directors has passed a resolution evidencing the appointment of the Compliance Officer with appropriate authorities, and the Compliance Officer has a signed letter of appointment evidencing compliance responsibilities and other duties.
2. The Agency's organizational chart reflects the designation from the Board of Directors that the Compliance Officer reports to Chevy Frankel, the Executive Director of Ahivim.
3. Ahivim has designated Joel Graus, a full-time employee of Ahivim, to serve as the Compliance Officer. The Compliance Officer's Powers, Duties and Responsibilities
4. The Compliance Officer is responsible for the day-to-day operation of the Compliance Program. The Compliance Officer may, in addition to the following, designate such other persons as he or she may deem appropriate to assist, subject to the Compliance Officer's oversight, in the implementation and operation of the Compliance Program.
5. The Compliance Officer's duties may solely relate to compliance or may be combined with other duties so long as compliance responsibilities are satisfactorily carried out.

2.2 The Compliance Officer's Duties

The Compliance Officer will:

a. know and understand the operation of the Compliance Program;
b. delegate (subject to the Compliance Officer's oversight) responsibilities under the Compliance Program to persons who, in the Compliance Officer's view, have the integrity and capability to make the kinds of judgments called for in the delegation;
c. consult with legal counsel, from time to time, to clarify or modify aspects of the Compliance Program that require clarification or modification;
d. participate in the development and maintenance of training and education programs and procedures for communicating compliance guidelines and guidance;
e. oversee the education and training of Affected Persons regarding the Code of Conduct, compliance obligations, and the operation of the Compliance Program;
f. oversee efforts to implement the operation of this Compliance Program;
g. participate in the identification of risk areas and the development and maintenance of monitoring and auditing processes for determining whether compliance standards are being met;
h. investigate, or coordinate the investigation of, detected or reported incidents of possible non-compliance and implement, and oversee the implementation of, appropriate corrective action based upon the results of audits, surveys and investigations;
i. participate in the development of procedures for reporting issues and refunding overpayments;
j. maintain documentation reflecting compliance activity, follow-up and corrective action taken, and report the results to the Board of Directors as appropriate;
k. take other actions as set forth in these compliance policies and procedures;
l. have a performance plan and an annual evaluation evidencing compliance responsibilities and other duties;
m. make quarterly reports to the Board of Directors, Executive Director, and Compliance Committee on the progress of adopting, implementing, and maintaining the Compliance Program, and such reports will address the Compliance Program, the results of risk assessments, monitoring and auditing activity, investigations, and plans of correction, and such other matters as the Compliance Officer may deem appropriate; and
n. be responsible for the development of an annual compliance work plan. While the Compliance Officer should be the person coordinating the implementation of the work plan, there may be other individuals involved in completing auditing and monitoring activities identified in the work plan.

2.2.1 Oversight of the Compliance Officer

1. Ahivim will, during an annual Compliance Program Effectiveness Review, perform an assessment as to whether the Compliance Officer's other duties, if any, hinder the Compliance Officer in carrying out their primary responsibilities, and whether the

Compliance Officer is able to satisfactorily perform their responsibilities. Such an assessment will be completed during the annual Compliance Program Effectiveness Review or whenever the Compliance Officer's duties change.

2. Ahivim will, during the annual Compliance Program Effectiveness Review, assess whether the Compliance Officer is allocated sufficient staff and resources to satisfactorily perform their responsibilities for the day-to-day operation of the Compliance Program.

2.3 Corporate Compliance Committee

1. Ahivim shall demonstrate their Compliance Program is well-integrated into the Agency's operations and supported by the highest levels of the organization by ensuring there is an active Compliance Committee consisting of senior managers. The Compliance Committee benefits from the perspectives of individuals with varying responsibilities in the organization, such as senior managers from operations, finance, audit, human resources, utilization review, social work, discharge planning, medicine, coding, and legal, as well as managers of key operating units.
2. The Compliance Committee will maintain a historical and current list of committee members and designated chair, including their names, titles, and from/to service dates. The Agency's organizational chart shall indicate the reporting structure between the Compliance Committee and the Executive Director and Board of Directors.
3. The Compliance Committee shall meet quarterly and shall take minutes of each meeting. The Committee reports directly no less frequently than quarterly to the Executive Director and the Board of Directors. Its charter outlines the duties and responsibilities, membership, designation of a chair, and frequency of meetings, as well as responsibilities for coordinating with the Compliance Officer. The Committee's charter shall be reviewed annually with the minutes noting the date of review and a description of any updates to the charter.
4. The Compliance Committee coordinates with the Compliance Officer to ensure that all Affected Individuals complete compliance training and education during orientation and annually.

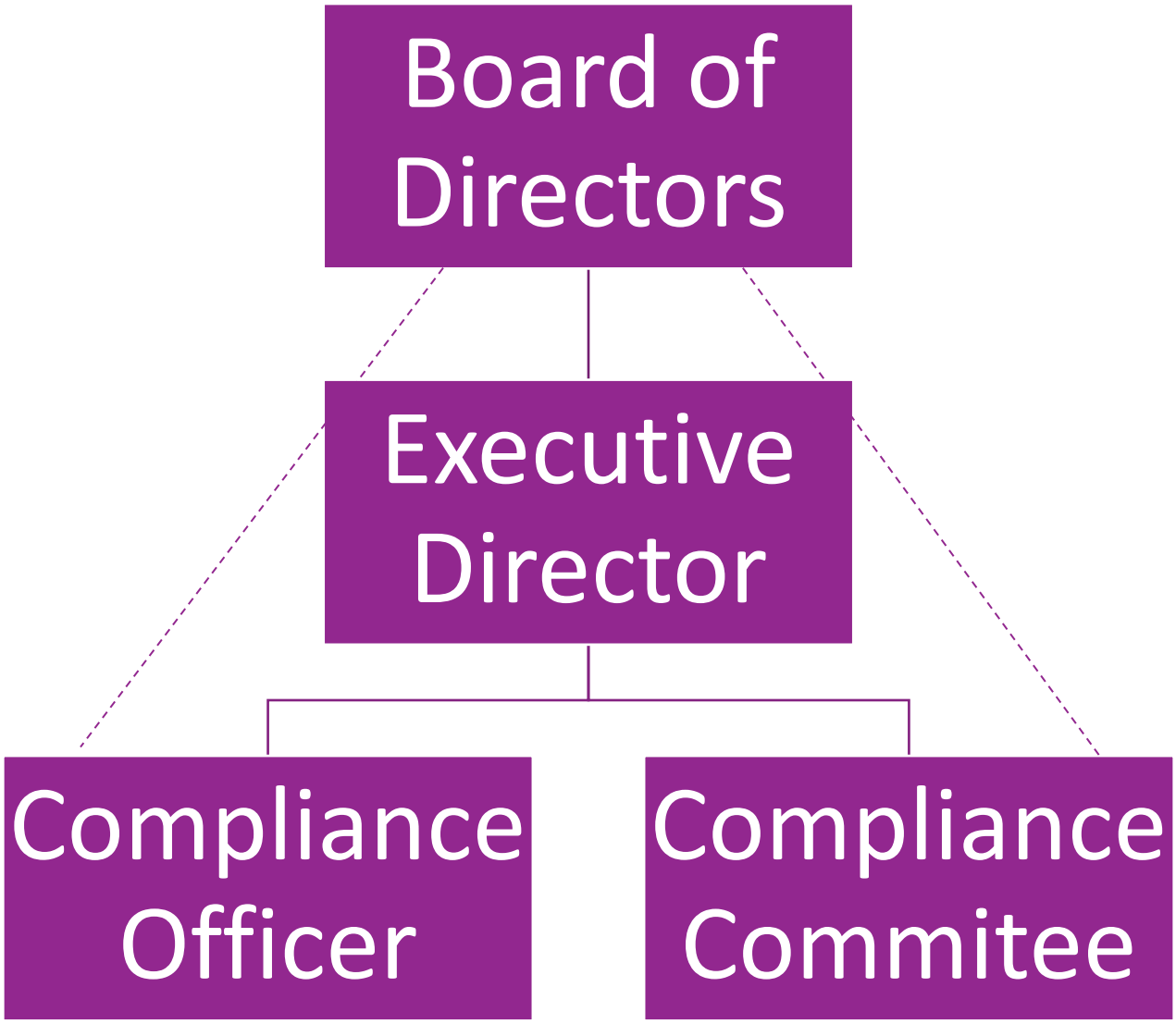
2.3.1 Committee Charter

1. The Compliance Committee shall be responsible for:
    a. Coordinating with the Compliance Officer to ensure that the organization's corporate compliance policies and procedures and standards of conduct are current, accurate and complete, and that compliance training includes all required topics and is completed timely, and is accessible to all affected persons.
    b. Reviewing the investigation and resolution of allegations of compliance violations, reviewing the risk assessment process, and monitoring that appropriate corrective action plans have been implemented.
    c. Coordinating with the Compliance Officer to ensure communication and cooperation by affected persons on compliance related issues, internal or external audits, or any other required function or activity.

d. Ensuring that the organization 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.
e. Where necessary, advocating for the allocation of sufficient funding, resources and staff for the Compliance Officer to fully perform his duties
f. Advocating for the adoption and implementation of required modifications to the compliance program.

2. The committee may appoint or engage the services of such other advisors as it may deem appropriate, including external legal counsel and other personnel for technical advice.
3. The committee will ensure that periodic reviews or evaluations of the Compliance Program are taking place to ensure current Federal and State regulatory requirements, as applicable to Ahivim's lines of business
4. The committee reports directly to the Executive Director.
5. Procedures for committee meetings:
   a) The committee will meet no less than four (4) times per year.
   b) The Compliance Officer will chair the committee meetings.
   c) At the beginning of each committee meeting, the Compliance Officer reviews the agenda and any follow-up issues from prior meetings.
   d) The committee will review the compliance cases closed since the previous meeting. As a part of the review of actual violations, the committee will review, as appropriate, whether existing policies and procedures were adequate and may propose recommending revisions to existing policies and procedures, as appropriate, in response to the violations.
   e) The committee will review summary reports on hotline calls and their resolution, and any reports to the OMIG's Self-Disclosure Program.
   f) The committee will review the status of the internal audit program and any other matters it deems appropriate.
   g) At the end of the meeting, the committee will review any follow-up items for discussion at subsequent meetings and set the date, time and location of the next meeting (subject to subsequent confirmation).
   h) Minutes of each meeting will be prepared by a designated member of the committee and will be distributed to the committee members within two weeks following the meeting.
6. At least annually, the committee will review:
   a) the Code of Conduct and related policies, and may propose changes to them, if deemed appropriate;
   b) the compliance and/or audit work plan;
   c) the topics to be covered at the periodic employee training sessions.
7. This charter will be reviewed, and updated if necessary, at least annually.

2.4 Organizational Chart: Compliance Function



Section 3: Training and Education

3.1 Training of Affected Persons

1. In conjunction with the Compliance Committee, the Compliance Officer will coordinate the provision of training to all Affected Persons on the existence, content, operation and expectations of the Compliance Program.
2. As part of orientation, in conjunction with the Compliance Committee, the Compliance Officer will coordinate the provision of training with respect to all new Affected Persons on the existence, content, operation and expectations of the Compliance Program.
3. The Compliance Officer, in conjunction with the Compliance Committee, will coordinate the provision of annual in-service training for Affected Persons regarding the existence, content, operation and expectations of the Compliance Program. The Compliance Officer, or their designee, will maintain a record of individuals who have attended such training.
4. The Compliance Officer, in conjunction with the Compliance Committee, will coordinate the provision of such additional training to Affected Persons as he or she may deem appropriate to carry out the goals of the Compliance Program.
5. Compliance training will relate to compliance expectations and pertinent legal requirements including but not limited to:

a. New York State laws pertaining to civil or criminal penalties for false claims and statements;
b. Ahivim's Employee Handbook, its Code of Conduct, and its policies and procedures for detecting and preventing fraud, waste and abuse; and
c. Such additional information, including but not limited to the operational requirements relating to Ahivim and to the Medicaid program, as the Compliance Officer may from time to time deem appropriate.

6. The Compliance Officer will coordinate the distribution of information about Ahivim's policies and procedures for detecting and preventing fraud, waste and abuse to Affected Persons and maintain signed acknowledgments of receipt.
7. During and after each training, all trainees will have the opportunity to ask questions about the areas that they are being trained in.

3.2 Ahivim's Compliance Training Plan

1. Immediately upon hire, all new employees, compliance personnel and senior management officials must complete the required training. The Human Resources department is responsible for distributing the training to new hires and tracking and documenting training completion.
2. It is the responsibility of the compliance officer, assisted by the compliance committee, if necessary, to ensure that training materials are current and that the Human Resources department is in possession of the most updated training materials for distribution.

3. Affected persons who are not employees of the organization are directed to the compliance officer to receive their training. The compliance officer maintains documentation of training completion/attestation of receipt together with the affected individual's contract or other documentation.
4. Training effectiveness for employees will be assessed through a mandatory quiz that must be completed with a pass rate of at least 80 percent.
    a) Attendees falling below the passing grade must repeat the training and pass a different version of the quiz before receiving a training completion certificate.
    b) Attendees who fail the training 3 times must receive in-person training from the compliance officer who will personally assess and document the participant's understanding of the training materials.
5. Training will also take place annually. The training materials will be reviewed and revised prior to the annual organization-wide training.
6. Training materials will include at least the following topics:
    a) Ahivim's identified risk areas
    b) The policies and procedures outlined in Section 1 of the compliance plan
    c) The role of the Compliance Officer and the Compliance Committee
    d) How participants can ask questions and report potential compliance-related issues to the Compliance Officer and senior management
    e) Participants' obligation to report suspected illegal or improper conduct and the procedures for submitting such reports; and the
    f) Protection from intimidation and retaliation for good faith participation in the compliance program;
    g) Disciplinary standards, with an emphasis on those standards related to the organization's compliance program and prevention of fraud, waste and abuse
    h) How Ahivim responds to compliance issues and implements corrective action plans;
    i) Requirements specific to the OPWDD and HCBS programs
    j) An overview of coding, billing and claim submission requirements (for those persons to whom it is relevant)
7. Employees who are unable to attend a scheduled training will be required to obtain the training materials from the Compliance Officer and successfully pass the quiz within 30 days from the date of the original training. Employees who disregard repeated reminders to complete the training will be subject to disciplinary action per Section 5 of the organization's compliance plan.
8. In addition to periodic training, the compliance officer will disseminate any relevant new or updated compliance information to affected individuals. Such information may include, but is not limited to, updated policies, fraud alerts, advisory opinions, newsletters, bulletins and Medicaid regulations.

Section 4: Communication Lines to the Compliance Officer

4.1 Reporting Non-Compliance

1. Affected Persons associated with Ahivim must comply with the applicable laws and regulations and, in good faith, report any act of non-compliance as set out in this section.
2. Any person who learns of an act of non-compliance shall report the matter to the Compliance Officer or their direct supervisor, unless the supervisor is the subject of the non-compliance reporting, in which case the report shall be made directly to the Compliance Officer.
3. As all persons are required to report an act or acts of non-compliance, any person found to have known of such act or acts but to have failed to report it or them will be subject to disciplinary action.
4. All Affected Persons are encouraged to communicate with the Compliance Officer if they have a compliance question or issue or a question about whether an issue should be reported. Communication lines to the Compliance Officer are accessible to all persons associated with Ahivim.
5. The designated contact information is as follows:
    a. The Compliance Officer's telephone number is 1-845-774-7000 x199.
    You may ask to speak with the Compliance Officer or leave an anonymous or confidential message.
    b. The address for the Compliance Officer is 15 Adelake Fareway, Monroe, NY 10950.
    You may use this address to contact the Compliance Officer with any issue or to submit an anonymous or confidential good faith report of a potential compliance issue.
6. These reporting methods will be posted on the organization's website for the benefit of all affected persons, Medicaid recipients and members of the general public who would like to report a compliance concern. The organization's website will direct members of the public to the compliance officer for additional information about Ahivim's compliance program and standards of conduct.

4.2 Anonymous Reporting

1. Reports may be made anonymously, by calling the Compliance Officer's telephone number (see above) using an outside line (the calling number is blocked), by mail, by e-mail to compliance@ahivim.org; or by using Ahivim's Compliance Suggestion Box which is located outside the front door of the building.
2. Although every effort will be made to preserve the confidentiality of reports of non-compliance (although calls made anonymously will preserve the anonymity of the caller), anonymity cannot be guaranteed by Ahivim. Circumstances may arise in which it is necessary or appropriate to disclose information in order to properly conduct the compliance investigation and for subsequent reporting of same. In such cases, disclosure of the reporter will only be made as necessary, and all reasonable steps will be taken to

maintain the reporter's anonymity if that is requested. Due to circumstances beyond Ahivim's control, and Ahivim's commitment to comply with applicable law and legal process, Ahivim may be required to disclose the reporting individual's identity.

Section 5: Disciplinary Policies

1. It is the responsibility of all persons affiliated with Ahivim to participate in good faith in the Compliance Program, to follow all aspects of the Compliance Program, to adhere to the Code of Conduct and to the policies and procedures that support Ahivim's Compliance Program, and to report suspected compliance issues as they arise and to assist in their resolution.

2. If the Compliance Officer concludes, after an investigation, that an individual has violated these expectations, as listed below, or expectations found elsewhere in the Compliance Program, then appropriate discipline may be imposed. This may include, as appropriate, verbal warning, written warning, suspension from duty without pay and/or termination of employment, depending on the seriousness of the issue and the frequency of occurrence.

3. The imposition of discipline can be based on the individual's:

    a. Failure to report suspected problems;

    b. Failure or refusal to assist in the resolution of any compliance investigation or plan of correction;

    c. Participation in non-compliant behavior;

    d. Permitting non-compliant behavior; or

    e. Encouragement, direction or facilitation, either actively or passively, of non-compliant behavior.

    f. Retaliating against an employee who has reported a suspected violation

4. These disciplinary policies shall be fairly and firmly enforced in a non-discriminatory manner. As of this version of Ahivim's Compliance Program there has been no discipline or sanctions taken with respect to any individual associated with Ahivim relating to conduct covered by the Compliance Program as there have been no known violations.

5. For other affected individuals such as independent contractors, failure to comply with any provision of Ahivim's compliance plan could be considered grounds for termination of the contract and/or reporting to law enforcement personnel, depending on the severity of the violation.

Section 6: Auditing and Monitoring

6.1 System for Routine Identification of Compliance Risk Areas Specific to Ahivim:

1. The Compliance Officer will, on an annual or more frequent basis, in conjunction with the Compliance Committee, routinely identify compliance risk areas specific to Ahivim's services and keep abreast of federal and state Medicaid requirements.
2. The Compliance Officer, or his or her designee, in conjunction with the Compliance Committee, may use the following reference materials to identify risk areas and to track federal and Medicaid program developments:
    a. the New York State Office of the Medicaid Inspector General ("OMIG") periodic Work Plan, which as of the date hereof is available at: https://omig.ny.gov/index.php/information/work-plan;
    b. the United States Office of the Inspector General ("HHS-OIG") periodic work plan, which as of the date hereof is available at: http://oig.hhs.gov/publications/workplan.asp;
    c. to the extent applicable, the Centers for Medicare and Medicaid Services, Office of Inspector General's (OIG's) Compliance Program Guidance materials, which as of the date hereof is available at: https://www.cms.gov/Medicare/Compliance-and-Audits/Part-C-and-Part-D-Compliance-and-Audits/CompliancePrograms PolicyandGuidance.html;
    d. Ahivim's experience, including the results of surveys, internal and external audits, management letters, self-assessments, hot line calls and compliance inquiries and complaints, if any;
    e. such other resources reflecting federal and state Medicaid developments (such as Medicaid provider updates (http://www.health.state.ny.us/health_care/medicaid/program/update/main.htm); and
    f. OMIG Compliance Alerts, located at https://www.omig.ny.gov/compliance-alerts; and
    g. industry publications as the Compliance Officer may deem appropriate.
3. The identified risk areas may include the following, among others to be determined by the Compliance Officer in conjunction with the Compliance Committee:
    a. billing for services not actually rendered; duplicate billing for services rendered;
    b. insufficient documentation for services for which reimbursement is claimed;
    c. use of the incorrect billing codes;
    d. untimely or late billing;
    e. payment or receipt of financial incentives or remuneration to induce referrals or to submit claims without out regard to whether they meet coverage criteria for reimbursement or accurately represent the services rendered;

f. knowingly billing for care that is inadequate, substandard or does not meet established quality of care requirements or care that the recipient does not medically require;
g. failing to comply with the requirements of the Medicaid and/or Medicaid Managed Care organizations that Ahivim participates in;
h. failure to provide proper governance oversight;
i. failure to return overpayments to Medicaid;
j. billing for services rendered by a person who is unqualified, unlicensed to render medical care, not properly credentialed, or who has been excluded from the Medicaid program;
k. billing for services rendered after the day of death of a client; and
l. such other areas as the Compliance Officer, in conjunction with the Compliance Committee, may reasonably determine.

4. Based on relevant new developments, the Compliance Officer, in conjunction with the Compliance Committee, will review existing policies and procedures to evaluate compliance with Medicaid requirements.

6.2 System for Self-Evaluation of Risk Areas, Including Internal Audits and, as Appropriate, External Audits

1. Ongoing Compliance Reviews. The Compliance Officer, with advice and guidance from such persons as he or she may deem appropriate, and in conjunction with the Compliance Committee, will create and revise as necessary an audit or work plan to:
    a. monitor identified risk areas; and
    b. evaluate compliance from previous periods, track progress toward compliance goals and identify risks for the coming year.
2. Ahivim may, from time to time, retain an outside consultant to conduct clinical reviews to evaluate, among other things, whether the existing documentation is complete and accurate and whether it reflects the provision of services as specified in Ahivim's person-centered plans.
3. Based on the results of the ongoing compliance reviews, the Compliance Officer, in conjunction with the Compliance Committee, will review existing policies and procedures to evaluate compliance with federal and state Medicaid requirements and to consider the need for possible change. The Compliance Officer, in conjunction with the Compliance Committee, will also consider the need for external auditing and coordinate such external auditing as deemed necessary.
4. Ahivim will have a work plan reviewed and approved by the Compliance Committee in consultation with the Board of Directors on an annual basis.

6.3 System for Evaluating Potential or Actual Non-Compliance as a Result of Self-Evaluations and Audits

1. The Compliance Officer will, with advice and assistance from such persons as he or she may deem appropriate, and in conjunction with the Compliance Committee, review the results of internal, or, as appropriate, external, audits and reviews to evaluate compliance, identify potential issues and investigate and analyze areas of potential or actual non-compliance.
2. The Compliance Officer, in conjunction with the Compliance Committee, will coordinate with Chevy Frankel, the Executive Director of Ahivim, or another individual as may be determined, and the effected individuals and departments, as appropriate, to conduct a root cause analysis as to why, if there is a determination of noncompliance, the noncompliance occurred, and to formulate corrective measures.
3. The Compliance Officer, in conjunction with the Compliance Committee, will monitor efforts, as appropriate, to address issues as identified and to evaluate progress toward compliance goals.
4. The Compliance Officer, in conjunction with the Compliance Committee, will report to the Board of Directors on an annual basis (or as needed) the evaluation of potential or actual non-compliance, plans of correction, and progress toward compliance goals.

6.4 Internal Auditing, Reporting and Monitoring

Ahivim is committed to routinely identifying compliance risk areas and conducting internal audits of identified areas of significant risk. Appropriate individuals in key management positions will be responsible for engaging in self-monitoring processes conducted within specific departments/divisions. The Compliance Officer and/or his designee(s), in conjunction with the Compliance Committee, will be responsible for internally auditing Ahivim programs to identify compliance risk areas, ensure credentialing of providers and persons associated with providers, as appropriate, mandating reporting, governance, and quality of care of medical assistance program beneficiaries.

Generally, Ahivim, through an outside consultant or internal staff, will conduct random case record reviews to ensure that the programs are complying with all regulatory and contractual requirements, in addition to verifying the accuracy of the billing information. The reviewer will compile a report based upon the internal review, which will be shared with appropriate supervisory staff. As appropriate, a follow-up review will be conducted to ensure that corrective action was taken to address issues of concern.

The Compliance Officer may engage external auditors to conduct additional reviews where appropriate.

1. Ahivim's Compliance Program includes routine auditing and monitoring of compliance risks. Internal and external audits are documented and shared with the Compliance Committee, Executive Director, and the Board of Directors.

2. The annual compliance program reviews are shared with the Executive Director, senior management, the Compliance Committee, and the Board of Directors.
3. The results of monthly exclusion checks are shared with the Compliance Officer, Compliance Committee and appropriate compliance personnel.
4. The Compliance Program has been designed and implemented to prevent, detect, and correct non-compliance with Medicaid program requirements, including fraud, waste, and abuse most likely to occur for Ahivim's risk areas and organizational experience.
5. Ahivim has established and implemented an effective system for routine identification and monitoring of compliance risks, such as:
    a. internal and external, if indicated, compliance audits focus on required risk areas; and
    b. any identified Medicaid program overpayments are reported, returned, and explained in accordance with Medicaid self-disclosure program requirements.

Ahivim shall complete an annual review of whether the Medicaid Compliance Program requirements have been met, to determine the effectiveness of its Compliance Program, and whether any revision or corrective action is required.

6.5 Systems for credentialing of providers and Affected Persons associated with Ahivim, mandatory reporting, governance, and quality of care of Medicaid program beneficiaries.

6.5.1 Credentialing/Exclusion Reviews.

1. Upon hiring Affected Persons or entities, the Compliance Officer, or his or her designee, will confirm the credentials of the person or entity and conduct an exclusion review to confirm that the Affected Person or entity has not been excluded from participation in federal healthcare programs, including Medicaid.
2. In conducting such review, the designated individual will check the following websites:
    a. the US HHS-OIG's List of Excluded Individuals/Entities (http://oig.hhs.gov/fraud/exclusions.asp);
    b. the General Services Administration's System for Award Management (https://www.sam.gov); and
    c. the OMIG List of Restricted, Terminated or Excluded Individuals or Entities (https://www.omig.ny.gov/search-exclusions), either manually, automatically or by contracting with an external monitoring service.
3. The Compliance Officer, or his or her designee, will conduct the exclusion check, or cause it to be conducted, on at least a monthly basis to confirm that Ahivim does not continue to employ or contract with any Affected Person who, since the time of the initial employment or contract (or prior exclusion review), has been excluded from participating in federal healthcare programs, or the New York State Medicaid program.

6.5.2 Mandatory Reporting Training.

The Compliance Officer or their designee will provide training to all employees, to the extent relevant to their job responsibilities, on:

6.5.2.1 the laws and regulations governing mandatory reporting; and

6.5.2.2 the process for initiating Ahivim's mandatory reporting system.

6.5.3 Promoting Corporate Governance.

The Compliance Officer, or his or her designee, will provide or coordinate the provision of training and resources to assist Ahivim in:

6.5.3.1 carrying out Ahivim's responsibilities of care and loyalty in the decision-making process;

6.5.3.2 overseeing the maintenance of quality of care and client safety; and

6.5.3.3 implementing the Compliance Program.

6.5.4 Overseeing Quality of Care of Medicaid Program Participants.

Ahivim will use its Quality Assurance Process to monitor the quality of care provided to Medicaid Fee-for-Service program participants/enrollees and Medicaid Managed Care program participants/enrollees.

Section 7: Response to Compliance Issues

7.1 Responding to Compliance Issues as They Arise

1. If a compliance issue arises, the Compliance Officer and/or his or her designee, depending upon the nature and seriousness of the allegation, will determine the action to take in response to the issue.

2. If an investigation is deemed necessary, the Compliance Officer and/or his or her designee, depending upon the issue, will promptly take steps necessary to conduct an internal investigation.

3. If the Compliance Officer discovers that a department's or individual's level of compliance is unacceptable, the Compliance Officer may impose a plan of corrective action, which may include monitoring of an individual, department or specific process on a more frequent basis. Corrective actions and sanctions for non-compliance will be addressed as outlined above, including, where appropriate, disciplinary action.

7.2 Investigating Potential Compliance Problems

1. If an investigation is deemed necessary, the Compliance Officer and/or his or her designee, depending upon the issue, will investigate or oversee the investigation and take reasonable steps to secure documents and evidence relating to the investigation.

2. Depending on the nature of the alleged violation, an internal investigation may include,at the Compliance Officer's discretion, ,but is not limited to: interviews of relevant personnel; review of documents; and engagement of such outside legal counsel, auditors, consultants or health care experts as the Compliance Officer may deem appropriate.

3. The Compliance Officer will take steps, as necessary, to preserve the availability of any privileges (including by way of example but without limitation the attorney-client privilege) that may be applicable to the situation.

4. The Compliance Officer and/or his or her designee will document the investigation. The Compliance Officer will strive to preserve the confidentiality of such records, where possible, and will make any necessary disclosures on a "need-to-know" basis only.

5. Upon such investigation, the Compliance Officer will determine the steps to take to correct any violation which may have occurred. The Compliance Officer will report the results of each investigation to Chevy Frankel, the Executive Director of Ahivim, and recommend a course of discipline and/or other corrective action as necessary. The Compliance Officer will report to the Compliance Committee and the Board of Directors at least quarterly with respect to these activities.

6. The Compliance Officer will coordinate with Chevy Frankel, the Executive Director of Ahivim, or another individual as may be determined, and the effected individuals and departments, as appropriate, to conduct a root cause analysis as to why, if there is a determination of noncompliance, the noncompliance occurred.

7. If the issue implicates current clients, Ahivim will take such action as may be necessary to safeguard client health and safety.

7.3 Responding to Compliance Problems Identified in the Course of Self-Evaluations and Audits

1. If a self-evaluation or internal or external audit identifies a compliance problem, the Compliance Officer will investigate the issue, or cause it to be investigated, to clarify the breadth and scope of the problem. Upon such investigation, the Compliance Officer, in coordination with Chevy Frankel, the Executive Director of Ahivim, the Compliance Committee, and potentially other individuals as deemed appropriate, will determine the steps to take to correct any violation which may have occurred. In making such determination, the Compliance Officer may consult with legal counsel, and/or such other persons as the Executive Director, Compliance Committee, and/or the Compliance Officer may deem appropriate.

2. Such steps may include, depending on the issue, development of a plan to correct the issue promptly and thoroughly; the implementation of policies, procedures and systems, as necessary, to reduce the potential for recurrence; training or retraining regarding applicable standards; disciplinary action; referrals to law enforcement; reporting to the government; and/or the repayment of overpayments, if any.

3. The Compliance Officer will monitor the progress of corrective action.

7.4 Correcting Compliance Problems Promptly and Thoroughly

1. The Compliance Officer, in conjunction with such additional personnel as he or she may deem appropriate, will develop or oversee the development of a plan of correction which addresses, as appropriate, at least the following:

    a) correction of harm, if any, resulting from a compliance issue;

    b) revisions to and/or development of systems to safeguard against future noncompliance of a similar nature;

    c) the need for training or retraining regarding applicable standards;

    d) the need for monitoring systems and auditing tools to evaluate future compliance; and

e) documentation of the corrective actions taken.

2. The Compliance Officer will assign to such personnel as he or she may deem appropriate individual responsibility for each aspect of the corrective action plan.

7.5 Implementing Procedures, Policies, and Systems, as Necessary, to Reduce the Potential for Recurrence of Identified Compliance Issues

1. If, based upon the investigation, the Compliance Officer determines that a revision to policies, procedures or systems is warranted to reduce the potential for recurrence of identified compliance issues, the Compliance Officer, upon consultation with Chevy Frankel, the Executive Director of Ahivim, the Compliance Committee, and such other persons as he or she may deem appropriate, will recommend such revisions be made.

2. The Compliance Officer will take such action as may be appropriate, with the assistance of such individuals as the Compliance Officer may deem appropriate, to convey the new policies, procedures and systems to the pertinent individuals.

3. The Compliance Officer will oversee the development of monitoring systems and/or auditing tools to evaluate future compliance.

4. The Compliance Officer will report directly to Chevy Frankel, the Executive Director of Ahivim, the Compliance Committee, and the Board of Directors on at least a quarterly basis, on significant issues and corrective action activities.

7.6 Identifying and Reporting Compliance Issues to the New York State Department of Health or the Office of the Medicaid Inspector General

1. If the Compliance Officer determines that mandatory reporting to the federal or state authorities is required, the Compliance Officer will make or cause such report to be made.

2. The Compliance Officer will consult with Chevy Frankel, the Executive Director of Ahivim, the Compliance Committee, and/or any legal counsel or consultants as may be necessary to determine the need and manner in which to make such reports.

3. Refunding Overpayments. If the Compliance Officer believes that a repayment to a third-party payer may be required, the Compliance Officer will consult with Chevy Frankel, the Executive Director of Ahivim, the Compliance Committee, and/or legal counsel or consultants as may be necessary to determine the need and manner in which to make such repayments, in accordance with Social Services Law §363-d(6) and OMIG self-disclosure guidance.

EFFECTIVE COMPLIANCE PROGRAM

Ahivim has an Effective Compliance Program which means it has the following:

a Compliance Program adopted and implemented by the required provider that, at a minimum, satisfies the requirements of SubPart 521-1;

a Compliance Program that is designed to be compatible with the provider's characteristics, which means that it:

is supported by the highest levels of the organization;

is well-integrated into Ahivim's operations;

promotes adherence to legal and ethical obligations; and

is reasonably designed and implemented to prevent, detect, and correct non-compliance with Medicaid program requirements.

CORPORATE COMPLIANCE TRAINING ACKNOWLEDGEMENT

(THIS FORM <u>MUST</u> BE SIGNED AND RETURNED TO THE OFFICE)

I acknowledge that I have received training on Ahivim's Corporate Compliance Program, which includes all federal and state laws relevant to Medicaid fraud, abuse and waste, Corporate Compliance policy and procedures, the Corporate Compliance plan, and all codes of conduct and conflict of interest matters. I know how to report compliance concerns or violations. I have been given the opportunity to read, review and ask any questions regarding the Ahivim Corporate Compliance Program. I have also been given a copy of the Ahivim Corporate Compliance Program. I agree to abide by the entirety of the Ahivim Corporate Compliance program. I understand that violation of these codes or any part of the Ahivim Corporate Compliance Program will result in disciplinary action, up to and including termination.

SIGNATURE: _____ DATE: _____

Appendix: FEDERAL & NEW YORK STATE STATUTES RELATING TO FILING FALSE CLAIMS

I. FEDERAL LAWS

1) Federal False Claims Act (31 USC §§3729-3733)

The False Claims Act ("FCA") provides, in pertinent part, as follows:

§ 3729. False claims

(a) Liability for certain acts.--

2) In general.--Subject to paragraph (2), any person who--

(A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;

(B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;

(C) conspires to commit a violation of subparagraph (A), (B), (D), (E), (F), or (G);

(D) has possession, custody, or control of property or money used, or to be used, by the Government and knowingly delivers, or causes to be delivered, less than all of that money or property;

(E) is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(F) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge property; or

(G) knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government, is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461) note; Public Law 104-410, (current penalties range from $13,508 to $27,018 per claim) plus 3 times the amount of damages which the Government sustains because of the act of that person.

(2) Reduced damages.--If the court finds that--

(A) the person committing the violation of this subsection furnished officials of the United States responsible for investigating false claims violations with all information known to such

person about the violation within 30 days after the date on which the defendant first obtained the information;

(B) such person fully cooperated with any Government investigation of such violation; and

(C) at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation, the court may assess not less than 2 times the amount of damages which the Government sustains because of the act of that person.

(3) Costs of civil actions.--A person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages.

(b) Definitions.--For purposes of this section--

(1) the terms “knowing” and “knowingly” --

(A) mean that a person, with respect to information--

(i) has actual knowledge of the information;

(ii) acts in deliberate ignorance of the truth or falsity of the information; or

(iii) acts in reckless disregard of the truth or falsity of the information; and

(B) require no proof of specific intent to defraud;

(2) the term “claim”--

(A) means any request or demand, whether under a contract or otherwise, for money or property and whether or not the United States has title to the money or property, that--

(i) is presented to an officer, employee, or agent of the United States; or

(ii) is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the Government's behalf or to advance a Government program or interest, and if the United States Government-

(I) provides or has provided any portion of the money or property requested or demanded; or

(II) will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded; and

(B) does not include requests or demands for money or property that the Government has paid to an individual as compensation for Federal employment or as an income subsidy with no restrictions on that individual's use of the money or property;

(3) the term "obligation" means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-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.

(c) Exemption from disclosure.--Any information furnished pursuant to subsection (a)(2) shall be exempt from disclosure under section 552 of title 5.

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

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 submits a claim to entities administering government funds, that he or she knows (or should know) is false. An example may be a physician who submits a bill to Medicare for medical services she knows she has not provided. The 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) are false and that indicate compliance with certain contractual or regulatory requirements. The third area of liability includes those instances in which someone may obtain money from the federal government to which he may not be entitled, and then uses false statements or records in order to retain the money. An example of this so-called "reverse false claim" may include a hospital which obtains interim payments from Medicare or Medicaid throughout the year, and then knowingly files a false cost report at the end of the year in order to avoid making a refund to the Medicare or Medicaid program.

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

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

3) Administrative Remedies for False Claims (31 USC Chapter 38. §§ 3801 – 3812)

This statute allows for administrative recoveries by federal agencies. If a person submits a claim that the person knows is false or contains false information, or omits material information,

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

II. NEW YORK STATE LAWS

New York 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 (State Finance Law §§187-194)

The New York State 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 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 $13,508 to $27,018 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 up to ten thousand dollars per violation. If repeat violations occur within five years, a penalty of up to thirty thousand dollars per violation may be imposed if the

repeat violations involve more serious violations of Medicaid rules, billing for services not rendered, or providing excessive services.

3) Social Services Law, Section 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, Section 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, Section 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 a 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. This statute has been applied to Medicaid fraud cases.

a. Fourth degree grand larceny involves property valued over $1,000. It is a class E felony.

b. Third degree grand larceny involves property valued over $3,000. It is a class D felony.

c. Second degree grand larceny involves property valued over $50,000. It is a class C felony.

d. First degree grand larceny involves property valued over $1 million. It is a class B felony.

4) Penal Law Article 175 - False Written Statements

Four crimes in this Article relate to filing false information or claims and have been applied in Medicaid fraud prosecutions:

a. §175.05 - Falsifying business records involves entering false information, omitting material information or altering an enterprise's business records with the intent to defraud. It is a class A misdemeanor.

b. §175.10 - Falsifying business records in the first degree includes the elements of the §175.05 offense and includes the intent to commit another crime or conceal its commission. It is a class E felony.

c. §175.30 - Offering a false instrument for filing in the second degree involves presenting a written instrument, including a claim for payment, to a public office knowing that it contains false information. It is a class A misdemeanor.

d. §175.35 - Offering a false instrument for filing in the first degree includes the elements of the second degree offense and must include an intent to defraud the state or a political subdivision. It is a class E felony.

5) Penal Law Article 176 - Insurance Fraud

This law applies to claims for insurance payments, including Medicaid or other health insurance, and 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 six crimes.

a. Health care fraud in the 5th degree – a person is guilty of this crime when, with intent to defraud a health plan, he or she knowingly and willfully provides materially false information or omits material information for the purpose of requesting payment from a health plan. This is a class A misdemeanor.

b. Health care fraud in the 4th degree – a person is guilty of this crime upon filing such false claims on more than one occasion and annually receives more than three thousand dollars. This is a class E felony.

c. Health care fraud in the 3rd degree – a person is guilty of this crime upon filing such false claims on more than one occasion and annually receiving over ten thousand dollars. This is a class D felony.

d. Health care fraud in the 2nd degree - a person is guilty of this crime upon filing such false claims on more than one occasion and annually receiving over fifty thousand dollars. This is a class C felony.

e. Health care fraud in the 1st degree - a person is guilty of this crime upon filing such false claims on more than one occasion and annually receiving over one million dollars. This is a class B felony.

III. WHISTLEBLOWER PROTECTION

Federal False Claims Act

The False Claims Act ("FCA") protects employees, contractors, and agents who engage in protected activity from retaliation in the form of their being "discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment." 31 U.S.C. § 3730(h)(1).

Protected whistleblowing or protected conduct under the False Claims Act Retaliation Provision includes:

1."lawful acts . . . in furtherance of an action under [the FCA]"; and

2."other efforts to stop 1 or more [FCA] violations." 31 U.S.C. § 3730(h)(1).

Recent cases have interpreted this protected activity to include: internal reporting of fraudulent activity to a supervisor; steps taken in furtherance of a potential or actual qui tam action, efforts to remedy fraudulent activity or to stop an FCA violation; and refusal to violate the False Claims Act.

The FCA protects whistleblowers who try to prevent one or more violations of the FCA as long as they have an objectively reasonable belief that their employer is violating, or will soon violate, the FCA. Case law has clarified that efforts to stop an FCA violation are protected even if they are not meant to further a qui tam claim. For example, refusing to falsify documentation that will be submitted to Medicaid is protected.

The act of internal reporting itself suffices as both the effort to stop the FCA violation and the notice to the employer that the employee is engaging in protected activity.

A whistleblower must prove, in order to prevail in a False Claims Act whistleblower retaliation case, that:

1. the whistleblower engaged in protected activity;

2. the whistleblower's employer took an adverse employment action against him or her; and

3. the adverse employment action was taken because of the whistleblower's protected activity. 31 U.S.C. § 3730(h)(1).

A whistleblower who prevails in an anti-retaliation action under the FCA may recover: reinstatement; double back pay, plus interest; and special damages, which include litigation costs, reasonable attorney's fees, emotional distress, and other noneconomic harm from the retaliation. 31 U.S.C. § 3730(h)(2).

New York State Labor Law, Section 741

A health care employer may not take any retaliatory action against an employee if the employee discloses certain information about the employer's policies, practices or activities to a regulatory, law enforcement or other similar agency or public official. Protected disclosures are those that assert that, in good faith, the employee believes constitute improper quality of client care. The employee's disclosure is protected only if the employee first brought up the matter with a supervisor and gave the employer a reasonable opportunity to correct the alleged violation, unless the danger is imminent to the public or client and the employee believes in good faith that reporting to a supervisor would not result in corrective action. If an employer takes a retaliatory action against the employee, the employee may sue in state court for reinstatement to the same, or an equivalent position, any lost back wages and benefits and attorneys' fees. If the employer is a health provider and the court finds that the employer's retaliatory action was in bad faith, it may impose a civil penalty of $10,000.00 on the employer.