

**NEW YORK CITY DEPARTMENT OF HEALTH & MENTAL HYGIENE  
FALSE CLAIMS & PAYMENT FRAUD PREVENTION POLICY  
DECEMBER 2007**

**I. PURPOSE**

Effective January 1, 2007, the federal Deficit Reduction Act of 2005 requires entities receiving Medicaid revenues in excess of \$5,000,000 annually to provide information to employees concerning:

- Federal, State, and City False Claims Acts and other relevant statutes;
- Policies for preventing and detecting fraud, waste, or abuse; and
- Employees' rights to be protected from retaliation for reporting in good faith any suspected fraud, waste or abuse.

In furtherance of its policy and to comply with Section 6032 of the Deficit Reduction Act of 2005 (the "DRA"), the New York City Department of Health and Mental Hygiene (DOHMH) provides the following information about its policies and procedures and the role of certain federal and state laws in preventing and detecting fraud, waste and abuse in federal health care program.

**II. APPLICABILITY**

This policy applies to those who work at or for DOHMH. This includes those who are full- or part-time Department employees (including those who are paid by the Health and Hospitals Corporation or the Centers for Disease Control and Prevention), temporary employees, and volunteers. This policy also applies to contractors and consultants with which DOHMH divisions/bureaus may enter into contractual agreements for services/activities in furtherance of the Department's mission. Contractors and vendors that bill Medicaid more than \$5 million/year are expected to maintain their own internal Compliance Policies as required by the New York State Office of Medicaid Inspector General. With guidance from the General Counsel's Office and the Compliance Officer, divisions/bureaus should include compliance provisions in the terms of vendor contracts and should monitor those contracts carefully.

**III. POLICIES & PROCEDURES FOR DETECTING & PREVENTING FRAUD, WASTE & ABUSE**

A. DOHMH maintains robust internal fiscal controls and strives to educate its work force on fraud and abuse laws, including the importance of submitting accurate claims and reports to the Federal and State governments. The Department's anti-fraud Compliance Program includes its:

1. Standards of Conduct for Departmental Employees (<http://healthweb.health.nycnet/pdf/hr/conduct.pdf>);
2. Employee training and education;
3. Regular fiscal and program auditing and monitoring;
4. Prompt review of all reports of suspected Medicaid fraud, waste, or abuse;
5. Commitment to respond to detected issues and develop corrective actions;
6. Opportunities for individuals to raise issues and concerns without fear of retaliation;

7. Oversight by the department's Compliance Officer, Compliance Committee, and senior management;
  8. Referral of complaints to, and cooperation with, the New York City Department of Investigation (DOI) and its Inspector General for DOHMH; and
  9. Regular participation in DOI's corruption prevention presentations.
- B. DOHMH management at all levels is responsible for encouraging a culture of compliance by reiterating the importance of compliance, developing procedures specific to their area that assist in the prevention of fraud, waste and abuse and responding to staff who come forward with suspicions of fraud, waste or abuse.
- C. City employees have an affirmative duty to report allegations of corruption, fraud, and waste to DOI. This ensures that the charges will be probed confidentially and professionally by investigators independent of the employee's own agency and superiors. If a City employee has knowledge of criminal activity and doesn't report it, the employee could face disciplinary action or termination, or other more serious legal penalties. A City employee who interferes or obstructs a DOI investigation could be removed from office or employment, or face criminal or civil penalties.
- D. The New York City Whistleblower Law protects City employees from retaliation for reporting misconduct, corruption, criminal activity and conflicts of interest. In order to be fully protected by the New York City Whistleblower's Law, employees should call DOI to report concerns about possible fraudulent activity. Any employee who reports such information will have the right and opportunity to do so anonymously and will be protected against retaliation for coming forward with such information under this DOHMH Compliance Policy as well as by Federal, State, and City law. DOHMH retains the right, however, to take appropriate action against an employee who has participated in a violation of Department policy and/or Federal, State, or City law.
- E. State, Federal, and City laws provide that any private citizen may bring their concerns of fraud and abuse directly to the government. A full explanation of these laws is appended to this Policy as Attachment A.
- F. Any DOHMH staff member, contractor, or other interested person who suspects fraud, waste or abuse with regard to the Medicaid program as it is administered by DOHMH or is billed by DOHMH for services rendered, must report the suspected fraud, waste, or abuse to DOI as soon as possible. Contact information for DOI is on the last page of this Policy.
- G. Any DOHMH staff member, contractor, or other interested person who has concerns about compliance with the Medicaid program as it is administered by DOHMH or is billed by DOHMH for services rendered, must report these concerns to the DOHMH Compliance Officer as soon as possible. Contact information for the Compliance Officer is also on the last page of this Policy.
- H. The Compliance Officer shall review all reports of suspected fraud, waste, or abuse within five (5) working days exclusive of holidays and vacation, and shall make all appropriate referrals to DOI or commence other appropriate action as soon as possible.
- I. A DOHMH Compliance Committee shall be established that includes, at a minimum, the Compliance Officer, General Counsel, Associate Commissioner for Finance and Planning,

and Assistant Commissioner for Audit Services. The Committee shall be convened upon request of any member.

- J. Materials relating to DOHMH's policies for detecting and preventing fraud are listed on the Department's intranet under the Employee Resources section's "Key Agency Policies."

**IV. DOHMH POLICY AGAINST RETALIATION**

In accordance with New York City and State laws, DOHMH strictly prohibits retaliation in any form against an individual making a good faith report, complaint, or inquiry about suspected fraud or malfeasance. Retaliation includes termination, demotion, harassment or other adverse employment action because the individual made a report or commenced an action under the federal or State False Claims Acts. Any DOHMH employee, official, or vendor who retaliates against another for making such a complaint, report, or inquiry is subject to discipline, up to and including dismissal from employment or termination of the business relationship with DOHMH.

**VI. REPORTING ALLEGATIONS OF FRAUD OR OTHER MISCONDUCT**

DOHMH employees must directly report all suspected cases of Medicaid fraud, waste or abuse to the New York City Department of Investigation's Inspector General for DOHMH:

**Inspector General Christopher Staackmann or  
Deputy Inspector General L. Stephan Zander  
80 Maiden Lane, 17<sup>th</sup> Floor  
New York, NY 10038  
(212) 825-2141 or 7318**

DOI operates a **confidential Complaint** Hotline 24-hours/day, 365 days/year:

**212-825-5959 or 212-3-NYC-DOI**

More information on how to contact DOI is available online at: [www.nyc.gov/html/doi](http://www.nyc.gov/html/doi).



Contact the DOHMH Compliance Officer if you have any concerns regarding the Department's Medicaid compliance or if you have any questions regarding the DOHMH Compliance Program. As of October 31, 2007, the Compliance Officer is:

**Chari Anhouse, JD, MPA  
Bureau of Finance & Planning  
NYC DOHMH  
125 Worth Street  
New York, NY 10013  
(212) 788-4753  
[canhouse@health.nyc.gov](mailto:canhouse@health.nyc.gov) (Please insert "Compliance" in the subject line.)**

Thank you for your ongoing commitment to ethical behavior and support of DOHMH's mission.

## ATTACHMENT A: SUMMARY OF FEDERAL, STATE, & CITY LAWS

The following is a summary of the federal False Claims Act and the Program Fraud Civil Remedies Act, as well as the relevant New York State and New York City statutes and Executive Order.

### A. Federal Laws

#### 1. **False Claims Act (31 U.S.C. § 3729 et seq.)**

##### a. Background & Penalties

The Federal False Claims Act was designed to enhance the government's ability to identify and recover losses due to fraud by creating strong financial incentives for entities to maintain vigorous compliance programs.<sup>1</sup> The penalties for violating the statute range from \$5500 to \$11,000 for each false claim and up to three times the amount of actual damages that the government proves it sustained as a result of the prohibited conduct. In addition, the United States Department of Health and Human Services (HHS) Office of the Inspector General (OIG) may exclude the violator from future participation in Federal health care programs, which means the violator will not be allowed to access Medicaid or Medicare funding for services in the future.

##### b. Liability

A person<sup>2</sup> is financially liable for the penalties noted when he or she files a false claim to the Federal government for payment.

- In all situations, a person must act “knowingly” in order to be found liable. The term “knowingly” means that the person:
  - Has actual knowledge of the truth or falsity of the information;
  - Acts in deliberate ignorance of the truth or falsity of the information; or
  - Acts in reckless disregard of the truth or falsity of the information.
- All claims for Medicaid payments are claims made to the Federal government for purposes of the Federal False Claims Act, even though the claim may initially be filed with New York State.
- A person is liable if he or she knowingly submits – or causes to be submitted – to the Federal government a false claim for payment; this includes knowingly making, using, or causing to be made a false record or statement to get a false claim paid. In addition, a person can be liable for *conspiring* to defraud the government by getting a false claim allowed or paid. In sum, the False Claims Act imposes liability on any person who submits a claim to the Federal government that he or she knows, or should know, is false. An example may be a physician who submits a bill to Medicaid for medical services he or she knows have not been provided.

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<sup>1</sup> The Act was originally passed in 1863 in response to wide scale fraud committed by vendors selling supplies to the Federal government during the Civil War. It has been regularly updated since then to address other types of fraud and abuse.

<sup>2</sup> The term “person” under federal law is defined to mean either an individual person, a group of persons, or an entity such as the Department of Health and Mental Hygiene or a community-based provider.

- The False Claims Act also imposes liability on a person 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.
- A person is liable under the Federal False Claims Act when he or she obtains money from the Federal government to which he or she may not be entitled, and then uses false statements or records in order to keep the money. This is called a "reverse false claim" and may include a hospital that obtains interim payments from Medicare throughout the year and then knowingly files a false cost report at the end of the year to avoid making a refund to the Medicare program.

c. Who Can Bring Suit

Law enforcement agencies and the Federal government can bring lawsuits against persons for alleged violations of the False Claims Act. The Act also authorizes private parties to file lawsuits against persons for alleged violations in the name of the United States. These lawsuits are called "*qui tam* actions" "*qui tam* suits" and the private parties who file them are known as "*qui tam* relators."<sup>3</sup> The law is designed to encourage individuals with inside knowledge of fraud on the government to come forward and report it. Therefore, the False Claims Act prohibits *qui tam* cases in which the plaintiff seeks to rely on information that is acquired from public sources unless the *qui tam* plaintiff is an "original source" of the information. An "original source" is defined in the Act as someone who has direct and independent knowledge of the information and who has reported it to the government before filing the case.

To begin a *qui tam* action, an individual must file a complaint in federal court under seal and serve the U.S. Department of Justice with a copy, along with any supporting material evidence. Documents filed under seal are not available for review without Court permission. After the *qui tam* action is filed, the government then has sixty (60) days to investigate the complaint's allegations to investigate and determine whether it will take over the action and prosecute the claim itself. In reality, the courts typically give the government extensions well beyond 60 days to investigate a claim.

As an incentive to bring actions, the False Claims Act provides that the person who files a successful *qui tam* action may receive between 15% to 30% of any monetary recovery, plus reasonable attorneys' fees and costs. This award may be reduced or negated, however, if the court finds that the *qui tam* relator planned, initiated, or perpetrated the fraud. The Act also provides that persons who file clearly frivolous cases can be held liable to the defendant for its attorneys' fees and costs.

*Qui tam* relators are sometimes called "whistleblowers" and are provided protection against retaliation for bringing a good faith action. Employees who can establish that they were discharged, demoted, harassed or discriminated against because they pursued a *qui tam* action in good faith are entitled to certain remedies, including reinstatement with comparable seniority, double back pay plus interest, and/or compensation for any special damages such as reasonable attorneys' fees. (See State and City law provisions below.)

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<sup>3</sup> *Qui tam* is a very old Latin term and means, "he who sues on behalf of the king as well as for himself."

## **2. Program Fraud Civil Remedies Act (31 U.S.C. §§ 3801 through 3812)**

This Program Fraud Civil Remedies Act law is similar to the False Claims Act, but provides administrative remedies against persons who make or cause to be made a false claim for money, property or services to certain federal agencies including HHS, which operates the Medicare and Medicaid programs. The PFCRA provides that any person making, presenting, submitting, or causing to submit a claim that the person knows or has reason to know is false, fictitious or fraudulent is subject to civil monetary penalties of up to \$5,000 per false claim, and up to twice the amount of the fraudulent claim. The PFCRA also requires that a person act “knowingly,” using the same definition as in the False Claims Act and explained above. There are no provisions, however, for private parties to bring actions under the PFCRA. Violations are investigated by HHS and enforcement actions must be approved by the Attorney General.

## **B. New York State Laws**

### **1. Civil Penalties (NY Social Services Law 145-b)**

New York State makes it unlawful to:

- a. Knowingly make a false statement or representation, or
- b. Attempt to obtain, or to actually obtain, payments for services or supplies furnished under the New York State Medicaid program by deliberate concealment of any material fact or other fraudulent scheme or device.

Either the State Attorney General or the local prosecutor’s office can file suits under this act. A violation of this law can subject a person or entity to civil damages equal to three times:

- The amount falsely overstated, or
- The amount of damages sustained as a result of the violation or \$5,000, whichever is greater in the case of non-monetary false statements and/or representations.

In addition, a person<sup>4</sup> may be required to pay up to a \$2,000 penalty for each item or service as restitution to the Medical Assistance Program if the person or entity knew, or had reason to know that:

- The payment involved the providing or ordering of care, services, or supplies that were medically improper, unnecessary or in excess of the documented medical needs of the person to whom they were furnished;
- The care, services or supplies were not provided as claimed; or
- The person who ordered or prescribed care, services or supplies that were medically improper, unnecessary or in excess of the documented medical need of the person to whom they were furnished was suspended or excluded from the Medical Assistance Program at the time the care, services or supplies were furnished.

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<sup>4</sup> A “person” under State law does not include local government units, so DOHMH or another City agency could not be sued under State law.

## 2. Health Care Fraud (Penal Law Article 177)

The New York State Penal Law has a specific set of laws entitled "Health Care Fraud" that imposes a range of criminal fines and jail terms depending on the amount of money involved in the fraudulent action. A person may be prosecuted under these laws if s/he:

- Acts with intent to defraud a private or public health plan (e.g., Medicaid or an HMO),
- Knowingly and willfully provides materially false information, or
- Omits material information for the purpose of receiving payment for health care items or services that s/he is not otherwise entitled to receive.

This is a specific intent crime, which means that a prosecutor must prove beyond a reasonable doubt that the individual intentionally committed one or more of these acts. The severity of penalties for committing Health Care Fraud corresponds to the amount of payment wrongfully received from a single health plan in a one-year period. Potential jail terms and fines increase in severity as the wrongful payment amount increases:

Payment Amount	Penalty
Under \$3,000	Class "A" misdemeanor
Between \$3,001 to \$10,000	Class "E" felony
Between \$10,001 to \$50,000	Class "D" felony
Between \$50,0001 to \$1,000,000	Class "e" felony
Over \$1,000,000	Class "B" felony

## 3. Whistleblower Protections (Labor Law § 740)

Under New York State's Labor Law, employers may not take retaliatory actions against an employee who in good faith discloses or threatens to disclose to a supervisor or to a public body that the employer is violating the law and the violation either:

- A. Presents a substantial and specific danger to the public health and safety, or
- B. Constitutes the crime of Health Care Fraud.

To bring an action under this provision, an employee must have first brought the alleged violation to the attention of the employer and given the employer a reasonable opportunity to correct the allegedly unlawful practice before going public with the allegations. The law allows employees who are the subject of a retaliatory action to bring a civil action in court and seek relief such as injunctive relief to restrain continued retaliation, reinstatement, back pay, and/or compensation of reasonable costs. The Act also provides that employees who bring an action without basis in law or fact may be held liable to the employer for its attorneys' fees and costs.

## C. New York City Laws

### 1. The Role of DOI

As required by New York City Charter and law, the DOHMH Compliance Program works with the New York City Department of Investigation (DOI) to address potential and actual

cases of fraud. ALL NEW YORK CITY EMPLOYEES AND OFFICERS HAVE A DUTY TO REPORT FRAUD AND SUSPECTED CASES OF FRAUD TO DOI. The DOHMH Compliance Officer will work with employees to facilitate such reporting, but it is the duty of each employee to report. Founded in 1873 as a result of the Boss Tweed and Tammany Hall scandals, DOI plays an important role in fraud reporting, investigation, penalties, and whistleblower protection. DOI serves the Mayor and the people of New York City by acting as an independent and nonpartisan watchdog for New York City government.

DOI's major functions include investigating and referring for prosecution cases of fraud, corruption and unethical conduct by City employees, contractors and others who receive City money. DOI is also charged with studying agency procedures to identify corruption hazards and recommending improvements in order to reduce the City's vulnerability to fraud, waste and corruption. Charged with oversight of the City workforce and budget, DOI works to prevent fraud from occurring, to detect fraud that has already occurred and to help the agencies and entities for which it is responsible to develop internal control systems and training to safeguard the public's interest in honest and efficient governance.

Every City agency is appointed a separate DOI Inspector General. The Inspector General for DOHMH is responsible for investigating all complaints from this department; contact information for the DOI Inspector General assigned to DOHMH is on the last page of this policy. The DOHMH Compliance Program works with DOI to ensure full investigation of all complaints as well as implementation of corrective actions in response to allegations of fraud or other improper activity.

## **2. Criminal Penalties (NYC Charter Chapter 49, § 1116)**

Any City employee or officer who willfully violates the law in relation to his or her job, defrauds the City, converts public property for personal use, allows another to convert public property to personal use, or knowingly files false or deceptive reports or statements can be found guilty of a misdemeanor. In all instances, the employee or officer will lose his or her job upon conviction and in some instances will be barred from City employment in the future. The full text of this provision is in the DOHMH *Standards of Conduct for Departmental Employees*, available on the DOHMH intranet at: <http://healthweb.health.nycnet/pdf/hr/conduct.pdf>.

## **3. NYC False Claims Act (NYC Adm. Code § 7-801 et seq.)**

On May 19, 2005, Mayor Bloomberg signed into law the New York City False Claims Act (NYCFCA). Like the Federal law, the NYCFCA imposes liability for knowingly submitting (or causing to be submitted) a false claim for payment; knowingly making, using, or causing to be made a false record or statement to get a false claim paid; and conspiring to defraud the City by getting a false claim allowed or paid. Also like the Federal law, the NYCFCA gives the City Department of Investigation (DOI) and the New York City Law Department opportunities to investigate a complaint from a private party and to prosecute the case themselves. Unlike the Federal law, the NYCFCA only involves false claims made to City government and requires potential plaintiffs to send complaints to DOI rather than file complaints with the court. DOI has established rules for how these claims should be filed, when they will intervene, and whether a complaint will be made public. More information about the NYCFCA is available on the DOI website at: [http://www.nyc.gov/html/doi/html/false\\_claims\\_home.html](http://www.nyc.gov/html/doi/html/false_claims_home.html).

#### **4. Duty to Report Fraud (Mayoral Executive Order # 16)**

All New York City employees and officers have an affirmative “duty to report, directly and without undue delay, to [DOI] any and all information concerning conduct which they know or should reasonably know to involve corrupt or other criminal activity or conflict of interest, (i) by another City officer or employee, which concerns his or her office or employment, or (ii) by persons dealing with the City, which concerns their dealings with the City.”

A City employee who has knowledge of criminal, fraudulent, or unethical activity and doesn't report it could face disciplinary action or termination, or other more serious penalties in a court of law. In addition, a City employee who interferes or obstructs a DOI investigation could be removed from office or employment, or face criminal or civil penalties. The full text of Mayoral Executive Order # 16 is in the DOHMH *Standards of Conduct for Departmental Employees*, available on the DOHMH intranet at: <http://healthweb.health.nycnet/pdf/hr/conduct.pdf>.

#### **4. Whistleblower Protections**

The City's Whistleblower Law (NYC Adm. Code § 12-113) and Mayoral Executive Order # 16 protect City employees from retaliation for reporting to DOI allegations of misconduct, corruption, criminal activity and conflicts of interest. The Law and Mayoral Order protect these employees from retaliation such as dismissal, demotion, suspension, or negative performance evaluations. To be protected, however, an employee must have reported the fraud or abuse to DOI before he or she suffers an adverse personnel action.