


Agency Policy Manual		Section Policy
	<input type="checkbox"/> Administration <input type="checkbox"/> Children's <input type="checkbox"/> Clinic <input type="checkbox"/> IFSS <input type="checkbox"/> Residential <input type="checkbox"/> SEMP <input checked="" type="checkbox"/> All	<u>Subject:</u> Corporate Compliance <u>Policy:</u> Fraud and Abuse
	Prepared by: <u>Maryjoan L. Case</u> Title: <u>Director of Corporate Compliance</u> CP Board Approval: _____ CP Chair Signature: _____ Date: _____	Date Effective: September 2007 Date Revised: _____

Purpose:

- CP Rochester maintains a Corporate Compliance Program that includes activities for the detection, prevention and investigation of fraud, waste and abuse.
- CP Rochester's Quality Supports and Systems/Corporate Compliance department is responsible for maintaining a program to detect, investigate, prevent and recover the loss of agency, government and/or consumer assets resulting from fraudulent and abusive actions committed by providers, contractors, employees and/or agents.
- The Corporate Compliance Department maintains a 24 hour help line, 1-585-334-6000 ext. 353, where potential fraud and abuse issues can be reported directly.
- The Corporate Compliance Department acts on referrals received from internal and external sources of potential fraud and/or abuse.
- CP Rochester is dedicated to compliance with fraud and abuse laws, including the anti-kickback statute, Stark law, and Federal and New York state provisions regarding false claims. These laws seek to detect and prevent fraud and abuse in the health care industry. (Please refer to the CP Rochester Fraud and Abuse Laws Information sheet attached).

Policy:

All CP Rochester employees, contractors and agents will receive information and/or training related to fraud and abuse laws. CP Rochester is dedicated to compliance with these laws and requires all of its employees, contractors and agents to be similarly dedicated.

It is important to note that CP Rochester is dedicated to compliance with these laws regardless of payment source. This policy pertains to the provision of our services provided under the Medicare and Medicaid programs, and where services are covered by other third party payors. These payors can include government agencies, private insurance companies, HMOs, and services that are paid directly by a patient/consumer.

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Procedure:

CP Rochester takes issues regarding false claims and abuse seriously. CP Rochester encourages all employees, management, contractors or agents of the Agency to be aware of the laws regarding fraud and abuse and false claims and to identify, report and assist the agency in resolving any issues immediately. Issues are resolved fastest and most efficiently when given prompt attention at the program/department level.

Therefore, CP Rochester encourages individuals to report concerns to their immediate supervisor as appropriate. If the supervisor is not deemed to be the appropriate contact or if the supervisor fails to respond quickly and appropriately to the concern then the reporting individual should report the concern to the Manager or Director of the program, the Vice President of Operations, the Director of Human Resources, the Corporate Compliance Director or through the CP Rochester Corporate Compliance Help Line (585-334-6000 ext. 353)

Agency responsibilities include, but are not limited to:

- a. Ensures that all employees, including management and any contractors or agents of the agency are provided with this policy, effective October 1, 2007.
- b. Ensures revisions to this policy are completed and implemented as necessary to comply with the changes in the laws.
- c. Requires all of the agency's employees, contractors and agents to report, in good faith to the Compliance Director any potential violation of law, regulation and/or the policies and procedures of CP Rochester.

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Fraud and Abuse Laws Information

A. Federal Laws Governing Fraud, Waste and Abuse (FWA)

1. False Claims Act: 31 U.S.C. 3729 – 3733

The federal False Claims Act imposes liability on any person or entity who:

- Knowingly files a false or fraudulent claim for payments to Medicare, Medicaid or other federally funded health care program;
- Knowingly uses a false record or statement to obtain payment on a false or fraudulent claim from Medicare, Medicaid or other federally funded health care program; or
- Conspires to defraud Medicare, Medicaid or other federally funded health care program by attempting to have a false or fraudulent claim paid.

“Knowingly” means:

- Having actual knowledge that the information on the claim is false;
- Acting in deliberate ignorance of whether the claim is true or false; or
- Acting in reckless disregard of whether the claim is true or false.

A person or entity found liable under the False Claims Act is, generally, subject to civil monetary penalties of between \$5,500 and \$11,000 per claim and three times the amount of damages that the government sustained because of the illegal act.

Under the False Claims Act individuals with knowledge of potential violations may file suit on behalf of the government in federal court. These individuals may be entitled to a percentage of the amount recovered by the government. The False Claims Act also provides protection from retaliation and discrimination for individuals that bring action under this law.

2. Program Fraud Civil Remedies Act: 31 U.S.C. 3801-3812

The Program Fraud and Civil Remedies Act (“PFCRA” establishes an additional administrative remedy against anyone who makes a false claim or false statement to any Department or Agency of the United States Government covered by the Act including the Department of Labor.

The PFCRA imposes liability on individuals or entities that file a claim that they know or have reason to know:

- Is false, fictitious or fraudulent;
- Includes or is supported by any written statement that contains false, fictitious or fraudulent information;
- Includes or is supported by a written statement that omits a material fact, which causes the statement to be false, fictitious or fraudulent and the individual or entity submitting the statement has a duty to include the omitted fact; or
- Is for payment for property or services not provided as claimed.

A violation of this section of the PFCRA is punishable by a \$5000 civil penalty for each wrongfully filed claim and an assessment of twice the amount of any unlawful claim that has been paid.

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3. Anti-Kickback Statute

The federal anti-kickback statute prohibits the Agency, its employees, and contractors from offering or paying remuneration in exchange for the referral of Government Programs business. Under the anti-kickback statute remuneration is considered to be anything of value that is exchanged. Penalties that may be imposed under this statute for violations include criminal penalties, exclusion from participation in government programs and civil monetary penalties.

4. Stark Laws

The Physician Self-Referral Act or Stark Law prohibits physicians from making referrals for certain health services that are payable by Medicare or Medicaid to any entity with which the physicians have a financial relationship. A financial relationship means either an ownership interest or a compensation arrangement. The purpose of the Stark Law is to ensure that referrals for services are made in the best interests of the patient.

5. Health Care Fraud (18 U.S.C. 1347)

It is illegal to knowingly and willfully execute or attempt to execute a scheme to either defraud a health care benefit program or to obtain money or property from a health care benefit program by means of false pretenses or representations. Penalties can include fines and/or imprisonment.

B. New York State Laws Governing Fraud, Waste and Abuse

1. New York False Claims Act (State Finance Law, 187)

The New York False Claims Act is modeled after the federal False Claims Act. This Act provides liability for knowingly presenting a false claim or record to the state or local government or a Medicaid managed care plan for payment or approval. Violators of the Act can be subject to civil penalties of \$6,000 to \$12,000 per claim as well as three times the amount of damages that the government sustained because of the illegal act. As with the federal False Claims Act, individuals with knowledge of false claims may bring action on behalf of the state or the local government, are entitled to a percentage of the proceeds collected, and are protected from retaliation and discrimination.

2. False Statements Relating to the Medicaid Program (Social Services Law 145-b)

Under New York State law, it is illegal for a person, firm or corporation to knowingly obtain or attempt to obtain payment from public funds for social services, including medical services by:

- making a false statement or representation;
- deliberately concealing a material fact; or
- a fraudulent scheme.

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3. Unacceptable Practices in the Medicaid Program (18 NYCRR 515.2-515.3)

Under Medicaid provider regulations, false claims and false claim statements are unacceptable practices. Sanctions that the Department of Health may impose on a provider for unacceptable practices include censure, repayment, and exclusion from participation in the Medicaid program.

4. Criminal Prohibitions under New York Law

In certain circumstances, a person who makes false statements may be charged criminally under New York law. Each of the following crimes may be a misdemeanor or a felony, depending on the intent of the perpetrator and the amount involved. Penalties include fines or imprisonment, or both.

➤ **Fraudulent Practices (New York Social Services Law 366-b)**

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 commits a fraudulent practice.

➤ **Falsifying Business Records (New York Penal Law 175.00-175.15)**

Business records are defined as writings, including computer data that are kept or maintained by an enterprise to evidence its condition or activity. A person may be found guilty of falsifying business records if, with the intent to defraud, he or she:

- makes or causes a false entry in the business records;
- alters, erases, obliterates, deletes, removes or destroys a true entry in the business records;
- omits to make a true entry in business records when required to do so by law or his or her position; or
- prevents the making of a true entry or causes the omission of a true entry in business records.

➤ **Tampering with Public Records (New York Penal Law 175.20-175.25)**

A person may be found guilty of tampering with public records if he or she knowingly removes, mutilates, destroys, conceals, makes a false entry in or falsely alters any record or other written instrument filed with, deposited in, or otherwise constituting a record of a public office or public servant, when he or she knows he or she does not have the authority to do so.

➤ **Offering a False Instrument for Filing (New York Penal Law 175.30-175.35)**

A person may be found guilty of offering a false statement of filing if he or she, knowing that a written instrument contains false information, offers or presents it to a public office with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office.

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➤ **Insurance Fraud (New York Penal Law Article 176)**

It is crime to file a health insurance claim, knowing that it is false. Insurance fraud may be a Class A misdemeanor or a Class B, C, D or E felony, depending upon the amount involved. It is also a Class D felony to commit insurance fraud more than once.

➤ **Health Care Fraud (New York Penal Law Article 177)**

Health care fraud includes knowingly filing, with intent to defraud, a claim for payment that intentionally has false information or omissions. Health care fraud may be a Class A misdemeanor or a Class B, C, D or E felony, depending upon the amount involved.

Under New York state law, any person or entity that obtains or attempts to obtain false payment may be ordered to pay damages or three times the amount that was overstated. If the false statement was non-monetary, the damages may be three times the amount of loss that the state or other governmental entity incurred. In addition to requiring repayment of improperly claimed funds, the Department of Health may impose additional penalties per item or service.

Whistleblower Protections

An individual who brings action under the False Claims Act is called a qui tam realtor or whistleblower. Federal law prohibits employers from retaliating against employees who file suits on behalf of the government under the false Claims Act. New York law prohibits employers from retaliating against an employee for disclosing or threatening to disclose practices which violate a law and create a danger to public health or safety or which constitutes health care fraud. **(Please refer to the CP Rochester Employee Reporting Protection Policy).**