

CABRINI OF WESTCHESTER
115 BROADWAY
DOBBS FERRY, NEW YORK 10522

Department: **Corporate Compliance**

Title: **Deficit Reduction Act of 2005
(Agent, Employee and Contractor
Education About False Claims, False
Statements and Whistleblower
Protections)**

Policy: Cabrini of Westchester is committed to complying with Federal and State laws and regulations designed to prevent fraud, waste, and abuse in State and Federal health care programs, including 42 U.S.C. 1396a(a)(68), the Deficit Reduction Act of 2005. To ensure compliance, Cabrini has developed a policy to inform all trustees, officers, employees, and volunteers as well as Cabrini’s vendors, contractors and agents (each, a “Covered Person”) regarding (1) the Federal False Claims Act (the “FCA”), the New York State False Claims Act (the “NYSFCA”) and other applicable New York State civil and criminal laws regarding false claims; and (2) protections for employees as whistleblowers under Federal and State laws. All Covered Persons should be aware of the laws regarding fraud and abuse and false claims and report any issues immediately in accordance with this policy.

Purpose: To inform Covered Persons about laws addressing fraud, waste and abuse, and employee whistleblower protections for reporting violations of those laws. (For additional information about whistleblower protections, see Cabrini’s Corporate Compliance Policy entitled “Whistleblower Protection” dated July, 2017).

Procedure: I. When to Raise a Concern

Covered Persons have an affirmative duty to disclose to and seek guidance from an appropriate supervisor, manager, or Cabrini’s Compliance Officer, if they believe any Covered Person or other person associated or doing business with Cabrini has engaged, is engaging, or may engage in any conduct that violates the FCA, the NYSFCA, and any related law, rule, or regulation (a “Concern”).

II. How to Raise a Concern

Concerns may be reported in writing (no form is necessary), by telephone: 914-693-6800, ext. 573 or ext. 735, by email to scnhcompliance@cabrini-eldercare.org, or in person. A Concern may be submitted:

- A. By discussing it with a supervisor or manager, who will in turn forward the Concern to the Department Head for review where appropriate;
- B. If the supervisor or manager is the subject of the Concern, it may be forwarded directly to the Department Head;
- C. If the Department Head is the subject of the Concern, it may be forwarded directly to the CEO for review where appropriate; or
- D. Directly to the Corporate Compliance Officer.

III. Anonymous Reporting

Concerns may also be raised anonymously. Anonymous complaints should be detailed to the greatest extent possible because follow up questions from Compliance will not be possible, making the investigation of anonymous complaints difficult.

Any individual reporting his/her own violation cannot utilize anonymous reporting to satisfy his/her obligation to report a Concern. In that circumstance, the individual should report the Concern directly to the Compliance Officer.

IV. Procedure for Receiving and Reviewing Concerns

Any supervisor, manager, or other person receiving a Concern should contact the Corporate Compliance Officer, who will coordinate further action.

Concerns will be managed in accordance with Corporate Compliance procedures. The Compliance Officer will review each Concern to determine the extent of the investigation necessary. All investigations will be conducted in a confidential and sensitive manner, to the extent reasonably possible. Information will be disclosed on an as-needed basis to facilitate review of the investigation materials or as otherwise required by law. Covered Persons must cooperate as necessary in connection with any such investigation. In the event a Concern involves or implicates the Compliance Officer, the Compliance Officer will promptly recuse him/herself from the investigation and inform the CEO in writing. The CEO may investigate, or appoint impartial attorneys to investigate the Concern.

V. No Retaliation Against Employee

Any employee who in good faith reports a suspected violation of the FCA or the NYSFCA or related laws, or who cooperates in an investigation of an alleged violation, will not suffer any retaliation for doing so.

The FCA and NYSFCA provide protection from retaliation to employees who engage in whistleblowing in good faith. Employees who are discharged,

demoted, harassed, or in any other manner discriminated against in the terms and conditions of employment, or otherwise harmed or penalized by an employer because of lawful acts conducted in furtherance of an action under the FCA or NYSFCA, are entitled to all the relief necessary to make them whole. Relief may include, but is not limited to, reinstatement, double back pay, plus interest, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

VI. Records of Concerns and Investigation Reports

All Concerns will be entered into the Compliance Log, which includes a summary of the Concern: nature and specific allegations and individuals involved; the date of receipt of the Concern; the current status of the investigation, including those responsible to investigate the Concern; any factual findings; any recommendations for corrective action(s), and any final resolution of the Concern.

VII. Oversight by the Audit Committee of the Board of Trustees

The Compliance Officer shall report to the Audit Committee of the Board of Trustees regularly on the implementation of and compliance with this policy. Any member of the Audit Committee who is a whistleblower him/herself shall recuse him/herself from deliberating on or addressing the Concern. However, the individual may present information as background or answer questions of the Audit Committee prior to any Committee deliberations or voting relating thereto.

VIII. Distribution of Policy

This policy shall be distributed to all Covered Persons -- trustees, officers, employees; to volunteers who provide substantial services to Cabrini; and to Cabrini's vendors, contractors and agents. Distribution may be in person, by posting it in a conspicuous location accessible to employees, and/or by posting it on Cabrini's website.

Attachment: Attached to this policy is a description of applicable Federal and State laws governing fraud, waste and abuse, and employee whistleblower protections for reporting same.

Approved by: Patricia Krasnausky

Title: President and CEO

Adopted: November 27, 2017

Effective Date: December 12, 2017

**Attachment to Cabrini Policy on False
Claims, False Statements and Whistleblower
Protections Deficit Reduction Act of 2005**

**Overview of Federal and State Laws
Relating to Filing False Claims**

I. FEDERAL FALSE CLAIMS ACT (31 U.S.C. § 3729 *et seq.*)

The False Claims Act (“FCA”) is a federal statute that imposes civil liability for fraud on any person who knowingly presents, or causes the submission of, a false or fraudulent claim for payment or approval to the Medicare or Medicaid programs.

Examples of claim submissions for payment or approval that could lead to FCA liability include:

- Filing a claim for services not rendered;
- Filing a claim for services not medically necessary;
- Submitting a claim containing known false information; and
- Billing for inadequate or substandard care

Under the whistleblower provisions of the FCA, a private person (otherwise known as a relator or whistleblower) may bring a civil action in the name of the United States to help the government recover amounts fraudulently obtained by a health care provider. Whistleblowers whose lawsuits are successful may be eligible for a percentage of the monetary amount recovered by the government.

For 2017, health care providers who are found to have violated the FCA may pay a minimum civil penalty of not less than \$10,957 and not more than \$21,916 per claim, plus up to three times the amount of damages which the government has sustained as a result of the fraudulent claim.

Administrative Remedies for Federal False Claims (31 U.S.C. § 3801-3812)

Civil monetary penalties may be imposed against any person who, among other things, presents or causes to be presented a claim to a Federal health care program that a person knows or has reason to know is false, fictitious, or fraudulent, or that contains an omission of material fact.

II. NEW YORK STATE FALSE CLAIMS ACT (New York State Finance Law §§ 187-194)

The New York State False Claims Act (“NYSFCA”), which closely tracks the FCA, establishes civil liability for any person who knowingly presents, or causes to be presented, a false or fraudulent claim for payment by any State or local government, including health care programs such as Medicaid. Under the whistleblower provisions of the NYSFCA, a private person (otherwise known as a relator or whistleblower) may bring a civil action in the name of the State of New York to help the government recover amounts fraudulently obtained by a health care provider. Whistleblowers whose lawsuits are successful may be eligible for a percentage of the monetary amount recovered by the government.

Examples of claim submissions for payment or approval that could lead to NYSFCA liability include:

- Filing a claim for services not rendered;
- Filing a claim for services not medically necessary;
- Submitting a claim containing known false information; and
- Billing for inadequate or substandard care

Like the FCA, the NYSFCA establishes a right of action and civil recovery for whistleblowers. A relator may bring an action on behalf of the State or local government for alleged violations of the NYSFCA by filing a complaint with the New York State Supreme Court, which remains under seal for at least 60 days.

Health care providers who are found to have violated the NYSFCA may pay a civil penalty of not less than \$6,000 and no more than \$12,000 per claim, plus treble damages.

III. STATE CIVIL AND ADMINISTRATIVE LAWS

False Statements (N.Y. Soc. Serv. Law § 145-b)

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.

Sanctions (N.Y. Soc. Serv. Law § 145-c)

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 individual's needs shall not be taken into account for a period of time when determining his or her needs, or that of his or her family, for public assistance.

Provider Sanctions (18 N.Y.C.R.R. §§ 515.1, et seq.)

18 N.Y.C.R.R. §§ 515.1 through 515.10 of the Department of Social Services regulations provide that a person who engages in fraudulent conduct such as the making of false claims or false statements in claiming a medical assistance payment may be subject to sanctions, including exclusion from participation in the Medicaid program "for a reasonable time." These regulations also provide sanctions for, among other things, failure to disclose; conversion, bribes and kickbacks; unacceptable record-keeping; employment of sanctioned persons; excessive services; failure to meet recognized standards; factoring; denial of services; and solicitation of clients.

IV. STATE CRIMINAL LAWS REGARDING FALSE CLAIMS AND RETALIATION

The following statutes have been applied to Medicaid fraud cases.

Penalties (N.Y. Soc. Serv. Law § 145)

Any person who submits false statements or deliberately conceals material information in order to receive public assistance, including Medicaid, may be charged with a misdemeanor.

Penalties for Fraudulent Practices (N.Y. Soc. Serv. 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 or other fraudulent means, or who knowingly submits false information to obtain greater Medicaid compensation, may be charged with a Class A misdemeanor.

Larceny Code (N.Y. Penal Law § 155)

Any person who, with the intent to deprive another of his property, obtains, takes or withholds the property by means of trick, embezzlement, or scheme to defraud may be charged with the crime of larceny.

False Written Statements (N.Y. Penal Law §§ 175-177)

Depending on the facts, filing false information as either business records or in regard to claims for health insurance payment, including Medicaid, may be chargeable either as a misdemeanor or a felony punishable by fines and/or imprisonment.

V. WHISTLEBLOWER PROTECTIONS

Federal False Claims Act (31 U.S.C. § 3730(h))

The FCA provides for protection for a relator from retaliation. An employee who is discharged, demoted, suspended, threatened, harassed, or discriminated against because of lawful acts conducted in furtherance of an action under the FCA, may bring an action in Federal court. Remedies include reinstatement, double back pay, plus interest, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

N.Y. False Claims Act (N.Y. Finance Law § 191)

The State False Claims Act also provides protection for a relator from retaliation. Any employee, contractor or agent who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts conducted in furtherance of an action under the NYSFCA may bring an action in court. Remedies include reinstatement, double back pay, plus interest, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

Retaliatory Personnel Actions (N.Y. Labor Law §§ 740, 741)

Employees subject to retaliatory personnel actions by employers for disclosing information about an employer's policies or activities to a supervisor, regulatory agency, law enforcement agency or other similar agency may bring an action in court for relief seeking reinstatement, back pay, and litigation costs including attorneys' fees. Protected disclosures are those that assert (i) the employer is in violation of a law and the violation creates a substantial and specific danger to the public health or safety, or (ii) the employer is engaged in an activity which constitutes health care fraud under Penal Law § 177, or (iii) the employee in good faith believes the health care employer's policies, practices or

activities constitute “improper quality of patient care” (which relates to matters which may present a substantial and specific danger to the public health or safety or a significant threat to the health of a specific patient). The protection against retaliation shall not apply unless the employee first brought the improper quality of patient care matter to a supervisor’s attention and gave the employer a reasonable opportunity to correct the alleged violation, unless there is imminent threat to public health or safety or to the health of a specific patient and the employee reasonably believes in good faith that reporting to a supervisor would not result in corrective action.

VI. FURTHER GUIDANCE

For a more detailed discussion of these laws, a summary that has been prepared by the Office of Medicaid Inspector General may be found at http://www.omig.state.ny.us/data/images/stories//relevant_fca_statutes_7307.pdf