



NEW YORK CITY HEALTH AND HOSPITALS CORPORATION

Office of Corporate Compliance

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TO: ALL EMPLOYEES/AFFILIATE EMPLOYEES and contractors, agents or consultants who furnish HHC with health care items or services, perform billing or coding functions, or who monitor the health care provided by HHC's facilities.

FROM: Stanley J. Pruszynski
Corporate Compliance Officer

DATE: September 4, 2007

RE: **SUBJECT: FALSE CLAIMS AND PAYMENT FRAUD PREVENTION**

HHC is committed to fully complying with all laws and regulations that apply to health care and to preventing and detecting any fraud, waste or abuse related to Federal and State health care programs.

Pursuant to federal law, HHC is required by law to establish certain policies and provide employees, contractors and agents with information regarding: (1) HHC policies and procedures for detecting and preventing fraud, waste and abuse; (2) the federal False Claims Act and similar state laws; and (3) an employee's rights to be protected from retaliation as a whistleblower. In furtherance of its policy and to comply with § 6032 of the Deficit Reduction Act of 2005 (the "DRA"), HHC 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 programs.

I. POLICIES AND PROCEDURES FOR DETECTING AND PREVENTING FRAUD, WASTE AND ABUSE

- A. HHC maintains a vigorous corporate compliance program 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 Corporate Compliance Program includes the designation of a Corporate Compliance Committee, Corporate and Network Compliance Officers and an Executive Compliance Workgroup; standards and procedures (including a

code of ethics); training and education; automated software designed to detect improper coding; a commitment to respond to detected offenses and development of corrective action initiatives; and opportunities for individuals to raise issues and concerns without fear of retaliation.

- B. Employees are required to bring immediately to the attention of their supervisor, another manager, the Network Compliance Officer, or the Corporate Compliance Officer, information regarding suspected improper conduct. Employees may also call the Compliance HelpLine at 1-866-HELP-HHC to report concerns about possible violations of the law or HHC policies. HHC is committed to investigating any such allegation of fraud, waste, or abuse or other improper conduct swiftly and thoroughly and will do so through its internal compliance programs and processes.
- C. HHC devotes substantial resources to investigate allegations of fraud and abuse and therefore, believes that all employees should bring their concerns to HHC first so it can redress and correct any fraudulent activity. Any employee of HHC who reports such information may do so anonymously and will be protected against retaliation for coming forward with such information both under HHC's internal compliance policies and procedure and Federal and State law.
- D. While HHC requires that its employees bring their concerns to HHC, certain State and Federal laws discussed more fully below provide that any private citizen may bring their concerns of fraud and abuse directly to the government. Please note, however, that if an employee never reports his/her concerns through the HHC internal compliance processes so that HHC can address these concerns, he/she will be in breach of HHC policy.
- E. Materials relating to HHC's policies for detecting and preventing fraud are listed on the HHC Intranet under Corporate Compliance and on the Internet under "About HHC."

II. SUMMARY OF FEDERAL AND STATE LAWS - The following is a summary of the federal False Claims Act and the Program Fraud Civil Remedies Act, and the relevant New York State statutes.

A. Federal Laws:

- 1. False Claims Act:** 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. The penalties for violating the statute are severe and range from \$5,500 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 participation in Federal health care programs.

An entity or person is liable under the statute if they knowingly submit (or cause to be submitted) to the Federal Government a false claim for payment and “knowingly” make, use or cause to be made a false record or statement to get a false claim paid by the Federal Government. The Act also prohibits a person or entity from conspiring to defraud the government by getting a false claim allowed or paid. The term “knowingly” means that a person: 1) has actual knowledge; 2) acts in deliberate ignorance of the truth or falsity of the information; or 3) acts in reckless disregard of the truth or falsity of the information.

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 Medicare for medical services he or she knows have not been provided. The False Claims Act also imposes liability on 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 or she 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 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 program.

The statute also authorizes private parties to file a lawsuit in the name of the United States. These private parties are known as “qui tam relators.” A case is initiated when the individual files a complaint in federal court, under seal, and serves the Attorney General with a copy of the complaint and any supporting material evidence. The government has sixty days to investigate the allegations in the complaint to determine whether it will take over the action and prosecute the claim. As an incentive to bring these cases, the Act provides that the person who files the action may receive between 10% to 30% of any monetary recovery, plus reasonable attorney’s fees and costs. This award may be reduced or negated, however, if the court finds that the person filing the case planned and initiated the fraud. The Act also provides that persons who prosecute clearly frivolous cases can be held liable to the company for its attorneys’ fees and costs.

Persons who file these cases, sometimes called “whistleblowers,” are provided certain protections against retaliation for bringing a good faith action. Employees who can establish that they were discharged, demoted, harassed or discriminated against because they pursued an action in good faith are entitled to be made whole, including such relief as reinstatement with comparable seniority as the qui tam relator would have had but for the discrimination, double back pay plus interest, and/or compensation for any special damages such as reasonable attorneys’ fees.

2. **Program Fraud Civil Remedies Act (“PFCRA”)**: This federal law is similar in structure to the False Claims Act, but provides administrative remedies against persons or entities that make or cause to be made a false claim for money, property or services to certain federal agencies, including the Department of Health and Human Services, which operates the Medicare and Medicaid programs. The law 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 uses the same definition of “knows or has reason to know” as used in the False Claims Act and explained above. Violations are investigated by the Department of Health and Human Services 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 knowingly make a false statement or representation (or by deliberate concealment of any material fact or other fraudulent scheme or device) to attempt to obtain, or to obtain, Medicaid payments for services or supplies furnished under the New York State Medical Assistance Program. A violation of this law can subject a person or entity, to civil damages equal to three times the amount falsely overstated (or in the case of non-monetary false statements or representations, three times the amount of damages sustained as a result of the violation or \$5,000, whichever is greater). In addition, the person or entity may be required to pay a civil monetary penalty of up to \$2,000 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;

The person who ordered or prescribed care, services or supplies which 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; or

The services or supplies for which payment was received were not, in fact, provided.

2. **Health Care Fraud (Penal Law 177):** The New York State Penal Law has a specific set of provisions entitled “health care fraud” that impose a range of criminal fines and jail terms depending on the amount of money involved in the fraudulent action. A person or entity may be prosecuted under these laws if they are acting with intent to defraud a private or public health plan (including, e.g., Medicaid or an HMO), they knowingly and willfully provide materially false information or omit material information for the purpose of receiving payment for health care items or services that they are not otherwise entitled to receive. Since this is a specific intent crime, it is believed that the prosecutor must prove beyond a reasonable doubt that the individual had specific intent to commit the crime rather than reckless disregard of the truth. The severity of the penalty for committing this crime corresponds to the amount of payment wrongfully received from a single health plan in a one-year payment. For example:

Payments under \$3,000 constitute a class “A” misdemeanor;

Payments between \$3,001 to \$10,000 constitute a class “E” felony;

Payments between \$10,001 to \$50,000 constitute a class “D” felony;

Payments between \$50,001 to \$1,000,000 constitute a class “C” felony; and

Payments that exceed \$1,000,000 constitute a class “B” felony.

3. **Whistleblower Protections (Labor Law 740):** Under New York’s Labor Law, employers are prevented from taking any 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 presents a substantial and specific danger to the public health and safety or constitutes the crime of health care fraud. To bring an action under this provision, the employee must first bring the alleged violation to the attention of the employer and give the employer a reasonable opportunity to correct the allegedly unlawful practice. 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 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.
4. **New York False Claims Act (Finance Law Article 13):** The New York False Claims Act is substantially similar to the Federal False Claims Act

discussed above. Like the federal law, the New York law 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 government by getting a false claim allowed or paid. The New York Law, however, imposes liability for claims submitted to the state or to a local government and not for claims submitted to the federal government. The term “knowingly” is defined in the same way in the New York law as it is under federal law.

Both the Attorney General and local governments may bring actions to enforce the New York law. The penalties for violating the statute range from \$6,000 to \$12,000 for each false claim (as opposed to \$5,500 to \$11,000 per claim under federal law) and up to three times the amount of actual damages sustained by the state or local government as a result of the prohibited conduct. Like the federal law, the New York law authorizes private parties to file a lawsuit in the name of the state or local government and allows for private parties bringing such actions to receive between 10% to 30% of any monetary recovery, plus reasonable attorneys’ fees and costs. In addition, as under the federal law, persons who file cases under the New York law are provided certain protections against retaliation for bringing a good faith action including reinstatement with comparable seniority and fringe benefits, double back pay plus interest, and/or compensation for any special damages such as reasonable attorneys’ fees.

III. PROTECTION AGAINST RETALIATION

HHC strictly prohibits retaliation, in any form, against any individual making a report, complaint, or inquiry in good faith, concerning suspected fraud, waste and abuse or other suspected violation of law or HHC policy. Retaliation is subject to discipline, up to and including dismissal from employment or termination of the business relationship with HHC.

Please contact the Corporate Compliance Officer, Stanley Pruszynski, at 646-458-5622, if you have any questions regarding the False Claims Act or the Corporate Compliance Program. Thank you for your ongoing commitment to ethical behavior and support of HHC’s mission.