

POLICY # 07.01

AREA: Quality and Compliance

TOPIC: Corporate Compliance Program

DATE OF BOARD APPROVALS AND REVISIONS: January 1, 2021

Revised: January 2023; Approved 2/22/2023; Revised: 8/24/2024



THE ARC ALLEGANY-STEUBEN CORPORATE COMPLIANCE PROGRAM

Contents

.....	1
.....	1
SECTION 1: INTRODUCTION.....	3
SECTION 2: Compliance Plan Policies and Procedures.....	8
The Arc Allegany-Steuben has established policies and procedures that will provide guidance to all representatives affected by the Corporate Compliance Program. These policies and procedures, in addition to this Corporate Compliance Program Manual, will outline the agency commitment, responsibilities, as well as expectations, of ethical business practices.	8
Policies:	8
.....	21
.....	27
SECTION 3: Designated Corporate Compliance Officer	31
SECTION 5: Training and Education	33
SECTION 6: Communication of Compliance Concerns or Questions	34
APPENDIX.....	39
APPENDIX A	40
PROTOCOL FOR RESPONDING TO.....	40
GOVERNMENT INQUIRIES	40
SEARCH WARRANTS	40
REQUESTS FOR INTERVIEWS.....	42
COMMUNICATIONS REGARDING A GOVERNMENT INQUIRY OR INVESTIGATION.....	42
INDEPENDENT CONTRACTOR / AGENTS / VENDORS	ERROR! BOOKMARK NOT DEFINED.
AFFECTED INDIVIDUAL ACKNOWLEDGEMENT FORM	43
APPENDIX C	45
MEMBERS OF THE ARC ALLEGANY-STEUBEN BOARD OF DIRECTORS	
ACKNOWLEDGEMENT FORM.....	45
APPENDIX D	46
CONTRACTUAL/FINANCIAL ARRANGEMENT WITH PHYSICIANS	46
WHO ALSO ACT AS A REFERRAL SOURCE	46
EMPLOYMENT AGREEMENTS.....	46
PERSONAL SERVICES AGREEMENTS	46
EQUIPMENT AND SPACE RENTAL ARRANGEMENTS	48
APPENDIX E	50
SUMMARY OF FRAUD AND ABUSE LAWS PREPARED BY THE NEW YORK STATE	
OFFICE OF THE MEDICAID INSPECTOR GENERAL.....	50
I. FEDERAL LAWS	50
II. NEW YORK STATE LAWS	51
III. WHISTLEBLOWER PROTECTION.....	54
APPENDIX F	56
ANNUAL CONFLICT OF INTEREST DISCLOSURE	56
FOR BOARD MEMBERS	56

SECTION 1: INTRODUCTION

Agency History:

The Arc Allegany-Steuben was established on January 01, 2021, when the Allegany Arc and the Arc of Steuben merged. Each agency was initially established in the early to mid-1960's as a grass roots organization to address the needs of children with disabilities in their communities. These initial efforts have since grown and become well established service agencies within the Allegany and Steuben County areas.

MISSION: To support and respect people's choices on their journey to independence.

VISION: A community of people who see opportunities in each other.

The Arc Allegany-Steuben provides a variety of services within the community from Individualized Residential Alternatives to Employment Services to Recreational and Respite Services. The organization reports to multiple State Oversight Agencies such as the Office for People with Developmental Disabilities and Office of Mental Health. Funding for services is received from Federal, State and Local government monies, including contracted services, which requires The Arc Allegany-Steuben to ensure all business operations maintain compliance with laws and regulations from all governmental entities.

The Arc Allegany-Steuben has established this Corporate Compliance Program to outline the organizational commitment to comply with laws, regulations, and ethical use of public monies in our day-to-day operations of supporting people with disabilities in all aspects of their lives.

Commitment to Ethical and Transparent Business Practices

The Arc Allegany-Steuben is committed to conducting all business in accordance with the highest ethical standards. The organization complies with all applicable Federal, State and Local laws and regulations.

The Arc Allegany-Steuben has a combined history of over 50 years providing services to people who have disabilities and their families based on principles of ethical and responsible conduct.

The Corporate Compliance Program is intended to establish a framework for legal compliance by The Arc Allegany-Steuben, particularly with Federal and State laws regarding fraud, waste, and abuse of government monies. The Corporate Compliance Program is intended to reflect good judgment and common sense. It is not intended to replace other compliance practices, rules or regulations as defined in The Arc Allegany-Steuben's policies and procedures. When an Arc Allegany-Steuben representative observes a situation that appears to violate the Compliance Code of Conduct or other law, rule or regulation, it is expected that this situation will be brought to the attention of a Supervisor, Corporate Compliance Officer or the Executive Director. Any Arc Allegany-

Steuben representative having a question regarding the application or interpretation of the Corporate Compliance Program should use the procedure outlined at the end of Section 6 in this document.

The Corporate Compliance Program defines the Compliance Code of Conduct that is required of all Arc Allegany-Steuben representatives, provides guidance to resolve questions regarding legal and ethical issues, and establishes a process for reporting possible violations of the law or ethical principles within the organization. The guidelines contained within the Corporate Compliance Program are designed to assist Arc Allegany-Steuben representatives in making ethical choices when confronted with difficult situations and decisions. The willingness of each Arc Allegany-Steuben representative to raise ethical and legal concerns is essential to meeting The Arc Allegany-Steuben's commitment to ethical business practices. Ultimately, the responsibility for ethical behavior rests with each person as they conduct their duties on behalf of The Arc Allegany-Steuben.

All Arc Allegany-Steuben representatives must abide by the letter and spirit of all applicable laws and regulations and must act in accordance with the principle of full disclosure of all facts related to any activity, even those which may reflect unfavorably upon the organization. The Arc Allegany-Steuben representatives must adhere to the Compliance Code of Conduct in all business and service functions and must act in a manner that enhances the organization's standing in the community. The Arc Allegany-Steuben promotes relationships based on mutual trust and respect and provides an environment in which anyone may question practices without fear of consequences.

The hiring/contracting/utilization and retention of any Arc Allegany-Steuben representative is contingent upon acceptance and compliance with the Compliance Code of Conduct as outlined in this Corporate Compliance Program. It is expected that others who do business with The Arc Allegany-Steuben (i.e. vendors, consultants, etc.) will adhere to similar standards in their dealings with The Arc Allegany-Steuben.

Required Provider Duties

The Arc Allegany-Steuben meets the definition of a Required Provider as outlined in New York Codes, Rules, and Regulations (NYCRR) Title 18 Part 521 and is obligated to implement and maintain a compliance program.

Required providers will:

- Adopt, implement, and maintain an effective compliance program which satisfies the Title 18 NYCRR Part 521.
- Retain all records demonstrating it has adopted, implemented, and operated an effective compliance program for no less than six (6) years from the date such program was implemented or amended.
- Ensure that contracts with contractors, agents, subcontractors, and independent contractors specify they are subject to the compliance program, to the extent they

are affected by applicable risk areas and all contracts will include termination provisions for failure to adhere to the compliance program requirements.

- Ensure the compliance program applies to all risk areas outlined in Title 18 Part 521.
- Comply with all directives of the department or OMIG with respect to the adoption, implementation and maintenance of compliance programs required.
- Certify to the department upon enrollment and annually thereafter; provide a copy of the certification, applicable, to each Medicaid Managed Care Organization with which we participate upon signing provider agreement and annually thereafter.
- Report, return and explain overpayments.

Compliance Program Structure

The Executive Director, with oversight from the Board of Directors, has the ultimate authority and responsibility for the implementation of the Corporate Compliance Program. Specifically, the Executive Director and the Corporate Compliance Officer, with oversight from the Corporate Compliance Committee and the Board of Directors, have the authority and responsibility for ensuring The Arc Allegany-Steuben's compliance with governmental laws and regulations, including the implementation of all necessary and required actions to prevent fraud, waste and abuse in the claims process, quality of care issues related to the services and supports provided for people who have disabilities, and financial arrangements with parties that may affect these same services and supports. The Executive Director and Corporate Compliance Officer also have the responsibility to make any required report to enforcement authorities.

New York State Office of Medicaid Inspector General (OMIG) has outlined specific elements that a Compliance Program must incorporate to be effective. The Arc Allegany-Steuben has developed this Corporate Compliance Program to include required elements and provide guidance to all representatives affected by the plan.

The Compliance Program will include:

- Written Policies and Procedures inclusive of a Policy of Non-Intimidation and Non-Retaliation
- A Designated Corporate Compliance Officer responsible to implement the Compliance Plan
- Designate a Compliance Committee to ensure business is conducted in an ethical and responsible manner.
- Training and Education to all affected representatives
- Lines of Communication to the Corporate Compliance Officer
- Disciplinary Policies to encourage good faith participation
- A System for routine identification of Compliance Risk Areas
- A System for responding to Compliance Issues

In addition to written policies and procedures, The Arc Allegany-Steuben has an established Corporate Compliance Committee whose responsibility will be to assist the Corporate Compliance Officer with implementation of the Corporate Compliance

Program. The committee consists of members representing Senior Management in each area of service provision within the agency, a representative from Finance Office; Human Resources; Information Technology; and the Corporate Compliance and HIPAA Privacy Officers. This committee will meet on no less than a quarterly basis and may convene more frequently if necessary.

Communication to the Board of Directors will occur monthly through written Board Reports. The Corporate Compliance Officer will attend Board Meetings no less than quarterly, to include the organization's annual Financial Audit and Board Corporate Compliance training. The Corporate Compliance Officer will have the opportunity to meet with the Board in Executive Session at least two times annually, more frequently if necessary.

Definitions:

The Arc Allegany-Steuben representatives – Representatives is defined in regulation as "Affected individuals" and means all persons who are affected by the required provider's risk areas including employees, the chief executive and other senior administrators, managers, contractors, agents, subcontractors, independent contractors, and governing body and corporate officers.

Required Provider is defined as: 1) any person subject to the provisions of articles 28 or 36 of the Public Health Law; 2) any person subject to the provisions of articles 16 and 31 of the Mental Hygiene Law; 3) any managed care provider or managed long term care plan; 4) any other person for whom the MA program is, or is reasonably expected to be, a substantial portion of their business operations.

Substantial Portion is defined as claiming or receiving at least one million dollars, in the aggregate, in any consecutive twelve-month period.

Effective compliance program is defined as: a compliance program adopted and implemented by the required provider that, at a minimum, satisfies the requirements of regulation and is designed to be compatible with the provider's characteristics (i.e., size, complexity, resources, and culture, which shall mean that it:

- (i) Is well integrated in the company's operations and supported by the highest levels of the organization, including the chief executive, senior management, and the local governing body;
- (ii) Promotes adherence to the required provider's legal and ethical obligations; and
- (iii) Is reasonably designed and implemented to prevent, detect, and correct non-compliance with MA (medical assistance) program requirements, including fraud, waste, and abuse most likely to occur for the required provider's risk areas and organizational experience.

"knowing and knowingly" is defined by the False Claims Act (FCA) to a) mean that a person (1) has actual knowledge of the information; (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 and b) require no proof of specific intent to defraud, provided, however that acts occurring by mistake or as a result of mere negligence are not covered by the FCA.

False Claim is defined as:

- a. Knowingly presenting, or causing to be presented, a false or fraudulent claim for payment or approval;
- b. Knowingly making or using, or causing to be made or used, a false record or statement material to a false claim;
- c. Conspiring to commit a violation of the false claims act; or
- d. Knowingly making, using, or causing to be made or used, a false record or statement material to an obligation to pay money or transmit property to the Government, or knowingly concealing or avoiding or decreasing an obligation to pay money or transmit property to the Government.

Examples of a False Claim are:

- a. Billing for services that were not actually rendered;
- b. Charging more than once for the same service;
- c. Billing for medically unnecessary services; and
- d. Falsifying time records used to bill Medicaid.

Intimidation is defined as: the act or process of attempting to force or deter an action by inducing fear.

“Good faith” is defined as: the individual believes a violation has occurred as they have reported.

Government personnel is defined as: any representative of a Federal, State or Local authority overseeing or investigating a situation involving the agency. This includes, but is not limited to, OPWDD, local or state police, Office of Medicaid Inspector General, Department of Labor, etc.

Organizational Experience is defined as:

- Knowledge, skill, practice, and understanding in operating its compliance program;
- Identification of any issues or risk areas in the course of its internal monitoring and auditing activities;
- Experience, knowledge, skill, practice and understanding of its participation in the MA program and the results of any audits, investigations, or reviews it has been the subject of, or

- Awareness of any issues it should have reasonably become aware of for its category or categories of service.

Retaliation is defined as: When an employer punishes an employee for participating in legally protected activity.

SECTION 2: Compliance Plan Policies and Procedures

The Arc Allegany-Steuben has established policies and procedures that will provide guidance to all representatives affected by the Corporate Compliance Program. These policies and procedures, in addition to this Corporate Compliance Program Manual, will outline the agency commitment, responsibilities, as well as expectations, of ethical business practices.

Policies:

Anti- Intimidation/Anti-Retaliation/Whistleblower Provisions
Billing Third Party Payors
Compliance Standards of Conduct
Delegation of Authority
Discipline for Corporate Compliance Violation
Compliance - Exclusion Checks
False Claims Act
Government Investigations
Self-Disclosure
Risk Assessment

POLICY NUMBER: 07.01.01

TOPIC: Corporate Compliance - Anti-Intimidation/Anti-Retaliation/Whistleblower
Provisions

AREA: Quality and Compliance

SCOPE: Agency wide

DATE OF BOARD APPROVALS AND REVISIONS: January 1, 2021

Reviewed: January 2023; Approved: 2/22/2023; Revised: 8/24/2024

Purpose: To clearly outline those protections, known as Whistleblower provisions, in place by law and regulation for any employee or contractor, also known as “Qui Tam” relator, who has disclosed or intends to disclose an activity, policy or practice that is in violation of law, rule or regulation which presents substantial and specific danger to the public health or safety, or which constitutes health care fraud.

Policy:

The Arc Allegany-Steuben requires all representatives to promptly report any known or suspected violations of the Corporate Compliance Program, Compliance Code of Conduct or laws, rules and regulations the Arc Allegany-Steuben is governed by.

In order to encourage individuals to come forward and report misconduct involving false claims, the Federal and State False Claims Acts contain “Qui Tam” or whistleblower provisions.

The Government, or an individual citizen acting on behalf of the Government, can bring actions under the False Claims Act (Federal or New York State). An individual citizen, referred to as a whistleblower or “Relator,” who has actual knowledge of allegedly false claims may file a lawsuit on behalf of the U.S. Government. If the lawsuit is successful, and provided certain legal requirements are met, the whistleblower may receive an award ranging from 15% - 30% of the amount recovered.

The False Claims Act prohibits discrimination by The Arc Allegany-Steuben against any representative for taking lawful actions under the False Claims Act. Any representative who is discharged, demoted, harassed, or otherwise discriminated against because of lawful acts by the representative in False Claims actions is entitled to relief. Such relief may include reinstatement, double back pay, and compensation for any special damages.

The Arc Allegany-Steuben has a zero-tolerance policy regarding intimidation or retaliation against any associate or representative who reports concerns regarding Compliance, intimidation, retaliation, or other violations of rules, regulations or laws in “good faith”. Associates may not be intimidated or retaliated against for participating in any investigation, or audit. Any associate or representative subjecting another associate or representative to intimidation or retaliation may be subject to disciplinary actions and/or other legal recourse based on the relationship with the organization and remedies applied through Federal and/or State law.

Reference(s):

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

New York State False Claims Act (State Finance Law §191)

Department of Labor Law 740

POLICY NUMBER: 07.01.02

TOPIC: Corporate Compliance – Billing Third Party Payors

AREA: Quality and Compliance

SCOPE: Agency wide

DATE OF BOARD APPROVALS AND REVISIONS: January 1, 2021

Reviewed: January 2023; Approved: 2/22/2023

Purpose: To establish the agency standard for quality of care in service provision and billing.

Policy: The Arc Allegany-Steuben will only bill for those services a person is authorized to received, are necessary for the person's health, safety and wellbeing and are provided according to regulatory and billing requirements.

The Arc Allegany-Steuben representatives will provide only those services that are necessary and appropriate. Representatives will submit only true and accurate bills to third party payors that reflect the services provided and that are not fraudulent. No representative may knowingly present or cause to be presented a claim for payment that is false, misleading or fraudulent.

Examples of fraudulent billing practices that the New York State Medicaid program has identified include:

- Billing for services that were not provided (e.g., a habilitation activity was not completed);
- Billing for services that were refused (e.g., individual declines to participate in a planned habilitation goal);
- Duplicate billing which occurs when a provider bills Medicaid and also bills another source
- Providing unnecessary services and billing a thirdparty payor for the unnecessary service;
- Upcoding (e.g., providing a brief or follow-up visit but billing for a comprehensive visit);
- Having an unlicensed person perform services that only a licensed professional should render, and bill as if the professional provided the service;
- Billing for more than was actually provided (e.g., a longer counseling session)
- Billing for a face to face visit when there was none.

Claims submission will be completed according to the requirements of the applicable payor (e.g., Medicaid, OPWDD, State Education Department, Department of Health), including but not limited to those related to coding, bad debt reporting, medical necessity, credit balances and duplicate billing.

The Arc Allegany-Steuben will periodically review billing practices to evaluate whether bills are being submitted to third party payors that are accurate and reflect appropriate services. The results of a review will be documented and evaluated carefully and corrective action implemented, as needed.

Inaccurate billing may subject the agency, involved associate and other representatives to civil or criminal penalties. Any representative who presents or otherwise is involved in the submission of a false, fraudulent, or fictitious claim for payment may be subject to immediate termination from employment.

Reviewed:
1/24/2023; July 2024

POLICY NUMBER: 07.01.03

TOPIC: Compliance - Standards of Conduct

AREA: Quality and Compliance

SCOPE: Agency wide

DATE OF BOARD APPROVALS AND REVISIONS: January 1, 2021

Reviewed: January 2023; Approved: 2/22/2023; Revised 9/27/2023

Purpose:

The Arc Allegany-Steuben is required by State and Federal Law to have a Corporate Compliance Program which includes policies and procedures that clearly outline the expectations of all representatives of the organization.

Policy:

It is the policy of The Arc Allegany-Steuben to have written policies and procedures that describe compliance expectations as embodied in Standards of Conduct. The Compliance Standards of Conduct is only one part of the organization's overall Corporate Compliance Program.

The Arc Allegany-Steuben representatives are expected to act with the highest ethical standards and responsible conduct. The Compliance Standards of Conduct is intended to provide all representatives with information and guidance in fulfilling daily job responsibilities. The Compliance Standards of Conduct ensures we meet our ethical standards and comply with applicable rules, regulations, and laws.

The Compliance Standards of Conduct is a mandatory set of standards all representatives must follow.

COMPLIANCE STANDARDS OF CONDUCT

General Expectations

Agency Associates will be provided information on the Compliance Standards of Conduct upon hire and annually through the Relias Learning Management System. Each associate will be required to sign an acknowledgement annually of receiving training on the Corporate Compliance Program and Compliance Standards of Conduct. Associates are expected to report any activity they believe could be a direct violation of the Compliance Program or Standards of Conduct. **(Failure to report is subject to disciplinary actions.)**

Agency Supervisors are not only expected to follow the Compliance Standards of Conduct and the Corporate Compliance Program, they also are expected to set an example for all associates and representatives of the agency. Supervisors must create an environment where associate's

feel free to raise concerns and propose ideas for improvement. Supervisors must also ensure the associates who report to them have adequate information and resources to comply with rules, regulations and laws that apply to any service they provide. Supervisors are expected to report any activity they believe is a direct violation of the Compliance Program or Standards of Conduct. Supervisors are expected to ensure reporting of any concern or question brought to them by another associate. **(Failure to report is subject to disciplinary action.)**

Board Members

The Arc Allegany-Steuben Board Members will be provided a copy of the Corporate Compliance Program including the Compliance Standards of Conduct at the time of Board Orientation and will be provided training annually on the Compliance Program and Standards of Conduct. Each Board Member will sign acknowledgement of training and receipt of the Corporate Compliance Program and Compliance Standards of Conduct.

Vendors and Contractors

The Arc Allegany-Steuben will provide all Vendors and Contractors with notification of the Corporate Compliance Program and will provide a copy of the Compliance Standards of Conduct at the time a business relationship or contract is established. Notification will be re-issued annually and/or at the time of contract renewal.

STANDARDS OF CONDUCT

Accuracy of Records

Accurate and reliable business records as well as clear and honest communication are the cornerstones of ethical corporate behavior. The Arc Allegany-Steuben depends on reliable, accurate and complete records to facilitate decision making and the proper discharge of organizational obligations.

The Arc of Allegany-Steuben will ensure all records, whether electronic or on paper, are submitted according to applicable laws and regulations. Organizational records include, but are not limited to, billing for services and products; documentation of service provision (including medication administration or other program documentation); financial and performance measurement reports; accounting records; payroll records; expense reimbursement records; benefit enrollment forms or other records pertaining to organizational business.

The following rules apply to all organizational records:

The Arc Allegany-Steuben representatives will make no false representations or dishonest statements in conducting business affairs, including documentation of services provided.

The Arc Allegany-Steuben representatives will document all information contemporaneously as defined by the organization and applicable laws and regulations.

The Arc Allegany-Steuben representatives will not improperly alter, backdate, predate, or fail to enter any service delivery record or document.

The Arc Allegany-Steuben representatives will document the services they have provided accurately and timely.

The Arc Allegany-Steuben representatives will only document services provided by another associate when they have handwritten documentation from the other associate as evidence of service provision.

The Arc Allegany-Steuben representatives will document true and accurate operating statistics and measurements. If information is in question, representatives will verify and report any identified discrepancies.

The Arc Allegany-Steuben will adhere to all record retention and destruction requirements as outlined in laws, and the organizational policies and procedures.

Business Courtesies; Gratuities; Gifts; Kickbacks; Solicitation

The Arc Allegany-Steuben prohibits any representative from soliciting or accepting gifts, favors, loans or other special consideration of any kind from any person or business organization doing business with the agency.

Federal and State governments have adopted strict rules and laws regarding gifts, meals, and other business courtesies for their employees. The Arc Allegany-Steuben's policy is to not provide any gifts, meals, entertainment, or anything else of value to any employee or representative of the Federal or State government, except light refreshments. All Federal or State rules and regulations will be considered regarding any other category of government official, or employee being given gifts, meals, or other business courtesies.

The Arc Allegany-Steuben representatives are prohibited from accepting or offering gifts of cash or cash equivalents (such as gift cards) from any current or former vendor, contractor, outside service provider or any other organization conducting business with the agency.

Representatives are prohibited from offering or transferring remuneration to any person eligible for benefits under Federal or State health care programs, including Medicaid and

Medicare. Offers of waivers of coinsurance or deductible amounts as part of any advertisement or solicitation are prohibited.

Representatives are discouraged from accepting gifts from an individual served or their family member except in normal gift giving situations such as holidays. Gifts must never exceed a value of \$25.00 and must be disclosed to the representative's immediate supervisor or agency contact and the Corporate Compliance Officer. Any gift or item received by a representative that exceeds this \$25.00 value must be reviewed and approved by the Corporate Compliance Officer, the Associate Executive Director of the program and the Executive Director or designee. Prizes or tokens which are part of a business activity or advertisement (such as items received at a conference); perishable items or items given to a program site or group are not considered gifts. Any prize or item received during business activity which exceeds a value of \$25.00 must be disclosed to the representative's immediate supervisor or agency contact and the Corporate Compliance Officer.

The Arc Allegany-Steuben discourages solicitation of sales, such as fund raising for a child or catalogue sales, between representatives. For further guidance refer to the Associate Handbook for applicable policy. At no time should any representative feel compelled to give gifts to other representatives, purchase items from other representatives or participate in any gift exchange groups.

Certificate and License Renewal

The Arc Allegany-Steuben representatives retained as employees or independent contractors in a position requiring professional licensing, certification or other credentials are responsible to maintain current status of their credentials and will comply with all Federal and State requirements applicable to their respective discipline. Human Resources will verify such licenses with applicable Federal and State oversight entities upon hire. Representatives requiring credentialing will be responsible for providing proof of renewal of such licenses. Allowing credentialing to be revoked or lapse is grounds for disciplinary action up to and including termination. Any concern of a representative providing or billing for services while unlicensed will be reported immediately to the Corporate Compliance Officer.

Compliance with Laws

The Arc Allegany-Steuben is governed by a variety of Federal, State and Local laws and regulations specific to our operations and services. All representatives are expected to adhere to all applicable laws, rules, regulations and organizational policy and procedure. Any questions regarding specific laws, rules, regulations, policies, or procedures should be brought to the attention of a supervisor or can be brought to the attention of the Corporate Compliance Officer.

Confidentiality of Information

The Arc Allegany-Steuben is governed by Federal and State laws and regulations regarding confidentiality of information related to our operations and services. Representatives are expected to adhere to all laws and regulations regarding sharing of information. Representatives will not copy or disclose any information without proper approval and authorization.

For further guidance refer to the HIPAA Privacy and HIPAA Security policies.

Conflict of Interest

The Arc Allegany-Steuben is committed to avoiding situations where a person's interests, whether personal or professional in nature, could conflict or appear to conflict with the interest of the agency. A conflict of interest occurs whenever a representative allows the prospect of direct or indirect personal gain to influence his or her judgement or actions in the performance of agency business.

As representatives of the Arc Allegany-Steuben, we must ensure that outside employment and outside activities do not interfere with job responsibilities nor jeopardize the public confidence in the agency. Any questions regarding a possible conflict of interest should be brought to the attention of the Corporate Compliance Officer.

Potential conflicts of interest include, but are not limited to:

- Ownership by a representative or a representative's family with a significant financial interest in a business that provides goods or services to the Arc Allegany-Steuben.
- Ownership by a representative or a representative's family with a significant financial interest that is a competitor of the Arc Allegany-Steuben.
- A representative's business interest which adversely affects the quality of that representative's work or requires use of agency equipment, supplies, facilities or agency name.
- Serving as a director, officer, consultant, or other key role in any enterprise that does business with or is a competitor of the Arc Allegany-Steuben.
- Any arrangement or circumstance, including family or other personal relationships, that might prevent the representative from acting in the best interest of the agency.

All representatives of the Arc Allegany-Steuben have a duty to disclose any conflict of interest and recuse themselves from any deliberations involving that conflict.

Prior to the initial election of any member to the Board of Directors, and annually thereafter, Directors and Officers as defined above must disclose, sign and submit to the Secretary of the Board of Directors or the Corporate Compliance Officer a written statement identifying any potential conflicts of interest including any entity of which the

director is an officer, director, trustee, member, owner or employee with which The Arc Allegany-Steuben is a participant. In addition to initial and annual disclosures, Directors, Officers, and Key Persons are under a continuing obligation to similarly disclose the material facts surrounding actual or possible Conflicts of Interest as they arise and may do so to the Board and/or Audit Committee, as appropriate.

Financial transactions (including bartering/trading, buying/selling personal items or catalogue merchandise) between a representative and person receiving services are strongly discouraged. Any transactions of this nature must be reviewed and approved prior to the completion of the transaction. Associates are expected to consult with their immediate supervisor, program Director, and Associate Executive Director if they have a situation where a transaction with a person receiving services takes place. Any transaction proposed must include supporting documentation to reflect the transaction is fair and reasonable to all parties involved.

Proper use of corporate assets

It is the responsibility of every representative to preserve the organization's assets. Organizational assets include, but are not limited to revenue earned, time, computer systems, materials, supplies, equipment, facilities, and information. Associates are expected to ensure they are following rules, regulations and organizational policy and procedure when dealing with documentation and billing. Organizational assets are to be accessed and maintained for agency business purposes. Representatives are expected to use and maintain all agency assets with the utmost care guarding against waste, abuse, loss, and theft.

Personal use of agency assets, for any purpose, must receive prior approval by the Associate Executive Director for the program, the Corporate Compliance Officer (as applicable) and the Executive Director or designee.

The Arc Allegany-Steuben is a tax-exempt entity under the laws of New York State and the Internal Revenue Service. The organization must comply with all rules and regulations pertaining to tax exemption to maintain its exempt status.

Personal use of the organization's Tax Exemption is strictly prohibited.

Quality of service and billing standards

The Arc Allegany-Steuben is committed to ensuring all services are of the highest quality and all billing is accurate and submitted in a timely manner. Agency representatives will provide only those services that are necessary and appropriate. Representatives will submit only true and accurate bills to third party payors that reflect the services provided and that are not fraudulent.

Examples of fraudulent billing practices that the New York State Medicaid program has identified include:

- Billing for services that were not provided (e.g., an associate was unable to provide the service scheduled, for any reason);

- Billing for services that were refused (e.g., a person states they do not want to participate in the service scheduled);
- Duplicate billing which occurs when a provider bills Medicaid and also bills another source.
- Providing unnecessary services and billing a third-party payor for the unnecessary service.
- Upcoding (e.g., providing a brief or follow-up visit but billing for a comprehensive visit).
- Having an unlicensed person perform services that only a licensed professional should render, and bill as if the professional provided the service.
- Billing for more than was provided (e.g., a longer counseling session; or billing for a full unit of service when only a half unit was provided).
- Billing for a face-to-face visit when there was none.
- Failing to ensure all necessary components are in place to support billing.

Claims submission will be completed according to the requirements of the applicable payor (e.g., Medicaid, OPWDD, State Education Department, Department of Health), including but not limited

to those related to coding, bad debt reporting, medical necessity, credit balances and duplicate billing.

Reference(s):

New York Social Services Law Section 363-d

Title 18 New York Codes of Rules and Regulations Part 521

Reviewed:1/24/2023; 8/22/2023; July 2024

POLICY NUMBER: 07.01.04

TOPIC: Corporate Compliance - Delegation of Authority

AREA: Quality and Compliance

SCOPE: Agency wide

DATE OF BOARD APPROVALS AND REVISIONS: January 1, 2021

Reviewed: January 2023; Approved: 2/22/2023

Purpose: To provide clear expectation and responsibility for all representatives who hold or intend to hold a position with authority with the Arc Allegany-Steuben.

Policy:

Any representative of the Arc Allegany-Steuben who holds or intends to hold a position with authority in the name of Arc Allegany-Steuben is required to disclose whether he/she has changed their name and whether he/she has ever been convicted of a misdemeanor or felony, including health care related crimes. In addition, the Arc Allegany-Steuben performs reasonable inquiries into the background of such representatives.

The Arc Allegany-Steuben will remove from direct responsibility or involvement in any federally or state-funded health care programs any representative with pending criminal charges or demonstrated non-compliant activities related to health care; or actual or proposed exclusion from participation in federally or state-funded health care programs.

Those with authority to act include, but are not necessarily limited to, positions with 'control' over the actions or policies of the Arc Allegany-Steuben and positions in charge of business units of the organization that set policy and can negotiate prices, contracts, etc.

Without limiting the application of this policy, the positions currently identified as having authority to act are:

1. The Arc Allegany-Steuben Board of Directors
2. Executive Director
3. Chief Financial Officer
4. Deputy Executive Directors
5. Associate Executive Directors
6. Directors
7. Associate Directors
8. Contracted representatives with Discretionary Authority

Reviewed:
1/24/2023; July 2024

POLICY NUMBER: 07.01.05

TOPIC: Compliance – Discipline for Corporate Compliance Violations

AREA: Quality and Compliance

SCOPE: Agency wide

DATE OF BOARD APPROVALS AND REVISIONS: December 2, 2020

Revised: 6/28/2021; Reviewed: January 2023; Approved: 2/22/2023

Purpose: To outline The Arc Allegany-Steuben's disciplinary policy regarding participation in the Corporate Compliance Program and consequences for violations. This policy will ensure fair and consistent application of disciplinary actions for violations of the Corporate Compliance Program or Compliance Code of Conduct.

Policy: The Arc Allegany-Steuben is committed to fostering a culture where compliant behavior is encouraged and rewarded so that when instances of noncompliant behavior occur, the agency can respond fairly and consistently. Representatives who, following investigation, are found to have committed violations of a rule, law or regulation, the Agency Compliance Program, Compliance Code of Conduct or policy and procedures of the Arc Allegany-Steuben will be subject to appropriate disciplinary action, up to and including termination.

This policy applies to all representatives of The Arc Allegany-Steuben. Disciplinary Actions applicable to the Board of Directors will be handled according with the Board's Bylaws.

The Arc Allegany-Steuben has a progressive discipline policy, see Corrective Action Policy, that is applied when addressing inappropriate conduct by agency associates. The types of corrective actions that may occur are as follows in general order of increasing formality and seriousness:

- Corrective Coaching – *date and time of notification must be maintained on-site with Supervisor*
- Counseling Memo
- Early Warning
- Notice of Deficiency
- Termination

In matters of Compliance Violations, disciplinary action will be taken according to the Corrective Action Policy. Minimally a representative from Human Resources, Compliance Office and the program Director and Associate Executive Director will meet to determine the appropriate level of discipline for the violation. Disciplinary action may be escalated to a more serious consequence depending on the severity and root cause of the violation. All escalated consequences will include documentation of the justification for escalation.

The Chief Financial Officer will serve as the liaison for any independent contractor or vendor who has possibly committed a violation of the Compliance Program.

Reference(s):

18 NYCRR 521.3 (c)
Social Services Law Section 363-d

Reviewed:

1/24/2023 – updated; July 2024

POLICY NUMBER: 07.01.06

TOPIC: Compliance - Exclusion Checks

AREA: Quality and Compliance

SCOPE: Agency Wide

DATE OF BOARD APPROVALS AND REVISIONS: January 1, 2021

Reviewed: January 2023; Approved: 2/22/2023

Purpose: To ensure that all associates, contractors, vendors and others with whom The Arc Allegany-Steuben does business with are properly screened for exclusions and are authorized to participate in federal and state healthcare programs.

Policy: It is the policy of The Arc Allegany-Steuben not to employ, contract with or conduct business with any individual or entity excluded from participation in federal or state sponsored health care programs such as Medicare and/or Medicaid. To prevent affiliation with any such person or entity, The Arc Allegany-Steuben will check New York State Office of Inspector General Exclusion List and Health and Human Services Office of Inspector General List of Excluded Individuals and Entities at or prior to affiliation with a person/entity and every thirty (30) days thereafter to guard the Agency against individuals or entities excluded subsequent to beginning employment or affiliation with The Arc Allegany-Steuben.

This policy applies to all current and proposed associates of The Arc Allegany-Steuben, contractors and vendors, volunteers/interns, and Board Members; also known as “representatives” for agency purposes. For purposes of the policy, all references to “Associates” include substitute, part-time, and full-time associates.

Definitions:

1. Exclusion Check: Research to determine in an individual or business entity has been excluded from participation with Medicare or Medicaid Programs. Three websites provide access to this information that make up the master list:
 - a. The NYS Exclusion Database, www.omig.ny.gov ;
 - b. Office of Inspector General (OIG) Exclusion List, www.oig.hhs.gov/fraud/esclusions.asp ;
 - c. System for Award Management, www.Sam.gov .
2. Ineligible Person: Any individual or business entity whose name appears on either of the above noted sources.

3. **Vendor:** Any entity that holds a contract with the agency or other person not employed by The Arc Allegany-Steuben who, on behalf of a business entity, supplies Medicaid health services or items. This includes someone who authorizes or approves the furnishing of health supplies or items, performs billing or coding for billing.

Duty to Report: All the Arc Allegany-Steuben associates, contractors and vendors, volunteers/interns and Board Members have a duty to report any action that would render them as an Ineligible Person by reporting to an immediate supervisor, the Corporate Compliance Office, or a member of the Administrative Team. Reports may also be submitted anonymously via The Arc Allegany-Steuben Corporate Compliance Helpline at 607-622-1950.

Completion of this process shall include:

- Human Resources Department screening applicants for employment.
- Business Office screening potential new contractors and/or vendors.
- The Corporate Compliance officer will review results of screenings to identify potential issues.

The discovery of ineligibility status or the addition of a representative to one of the above databases will disqualify that individual or entity from further employment, or contractor services.

Reference(s):

Social Services Law §363-d

Reviewed:

1/24/2023 – updated; July 2024

POLICY NUMBER: 07.01.07

TOPIC: Corporate Compliance – False Claims Act

AREA: Quality and Compliance

SCOPE: Agency wide

DATE OF BOARD APPROVALS AND REVISIONS: January 1, 2021

Reviewed: January 2023; Approved 2/22/2023

Purpose: To establish the Organization's commitment to detect and prevent fraud, waste, and abuse of Federal, State and Local health care programs.

Policy:

The Arc Allegany-Steuben is a non-profit organization which relies primarily on Federal, State and Local government funding and contracts for payment for the provision of services, including the Medicare and Medicaid Programs. It is the organization's policy to detect and prevent fraud, waste and abuse of all funding it receives. It is the policy of the organization to establish procedures and practices that ensure adherence to all laws and regulations as they apply to claims submitted for services provided.

The Arc Allegany-Steuben or any of its representatives will not knowingly submit false claims to the government, a contractor, or grantee of the government. The Federal False Claims Act and New York False Claims Act defines knowingly as: a person (1) has actual knowledge of the false claim; (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.

The Arc Allegany-Steuben or any of its representatives will adhere to all laws and regulations regarding reporting and returning all overpayments. The Patient Protection and Affordable Care Act requires overpayments to be reported and returned within 60 days of the date an overpayment was identified.

Reference(s):

Federal False Claims Act (31 U.S.C. §§ 3729 – 3733)

Federal Program Fraud Civil Remedies Act (31 USC §§ 3801-3812)

Patient Protection and Affordable Care Act "PPACA" (Pub. L. No. 111-148, 124 Stat. 119)

New York State False Claims Act (State Finance Law §§187-194)

Social Service Law §145-b

Reviewed:

1/24/2023; July 2024

POLICY NUMBER: 07.01.08

TOPIC: Corporate Compliance - Government Investigations

AREA: Quality and Compliance

SCOPE: Agency wide

DATE OF BOARD APPROVALS AND REVISIONS: January 1, 2021

Reviewed: January 2023; Approved: 2/22/2023

Purpose: To ensure a uniform response to any government inquiry.

Policy:

It is common for The Arc Allegany-Steuben to receive periodic audits by governmental agencies in the fulfillment of and compliance with rules, regulation, funding requirements, quality standards and general business practices to confirm ethical and responsible conduct. The Arc Allegany-Steuben representatives must adhere to proper procedures to ensure that the organization responds and fully discloses information in a proper and prompt manner to all governmental audits and investigations.

The Arc Allegany-Steuben will ensure response to all government inquiries meet regulatory and legal requirements and timeframes.

All Arc Allegany-Steuben representatives will follow the Protocol for Responding to Government Inquiries, Appendix A, in the Corporate Compliance Program manual.

Reviewed:
1/24/2023 – updated; July 2024

POLICY NUMBER: 07.01.09

TOPIC: Corporate Compliance – Self-Disclosures

AREA: Quality and Compliance

SCOPE: Agency wide

DATE OF BOARD APPROVALS AND REVISIONS: 01/01/2021; 03/29/2023; June 26, 2024

Revised: March 2, 2023; May 24, 2024

Purpose: The purpose of this policy is to establish the process for the identification and timely reporting and return of identified overpayments as required under Section 6402 of the federal Patient Protection and Affordable Care Act (PPACA).

Subdivision 6 of section 363-d of the Social Services Law requires persons who have received an overpayment under the MA (medical assistance for needy persons) ~~OMB~~ program to report, return and explain the overpayment to the department and the Office of Medicaid Inspector General (“OMIG”).

A person satisfies their obligation to report, return and explain by making a disclosure through OMIG’s Self-Disclosure Program, complying with the requirements as specified in section 521-3.4 of this SubPart, and returning the overpayment and interest to the department in accordance with the provisions of section 521-3.5 of this SubPart.

Policy:

It is the policy of the Arc Allegany-Steuben to adhere to all Federal and State laws and regulations regarding overpayments received from Medicare or Medicaid.

Effective March 23, 2010, PPACA establishes an obligation for providers to report and return identified Medicaid or Medicare overpayments. Specifically, an overpayment must be reported and returned within 60 days after the date on which the overpayment was identified or the date any corresponding cost report is due, whichever is later. Overpayments retained beyond the applicable 60-day period can result in the imposition of triple damages and monetary penalties under the False Claims Act if there is a knowing and improper failure to return the overpayment.

“Overpayment” is defined under PPACA as “any funds that a person receives or retains under title XVIII (Medicare) or title XIX (Medicaid) to which the person, after applicable reconciliation, is not entitled under such title”. Overpayments include, but are not limited to, findings of incorrect coding, insufficient or lack of documentation to support billed services, lack of medical necessity, duplicate payment, or Void or Adjustment of claims.

The Office of Medicaid Inspector General for NY State has established two processes for Self-Disclosures to be submitted. First is an abbreviated submission which is used for

routine administrative errors resulting in Void or Adjustment of claims. This form of submission is submitted monthly if the agency has had any errors of this type. The second form of submission is a Full Self-Disclosure, which is used in circumstances of a significant error that requires the agency to develop a corrective action plan to address the issue and ensure it does not re-occur.

Overpayments shall be returned in the manner and at the address specified by the payor or funding source. Consultation with legal representation will take place as needed.

Reference(s):

Section 6402 of the federal Patient Protection and Affordable Care Act (PPACA)

False Claims Act

18 NYCRR Part 521

Social Services Law 363 - d

POLICY NUMBER: 07.01.10

TOPIC: Compliance Risk Assessment Policy

AREA: Compliance

SCOPE: Agency Wide

DATE OF BOARD APPROVALS AND REVISIONS: January 1, 2021

Reviewed: July 2024

Purpose: Ongoing improvement and evaluation processes are crucial in detecting non-compliance and improving the quality of work and help to ensure the success of The Arc Allegany-Steuben Corporate Compliance Plan.

Policy: It is the policy of The Arc Allegany-Steuben to periodically identify compliance risk areas in order that such risk areas are assessed, and any needed corrective action taken. Risk areas to be assessed include, but are not limited to:

- Billings
- Payments
- Medical necessity and quality of care
- Governance
- Mandatory reporting
- Credentialing (applicable to associates, contractors, and registered providers)
- Other risk area identified by The Arc Allegany-Steuben

The Arc Allegany-Steuben assesses and identifies and documents risk areas using a risk assessment. Risks are prioritized and are used by the Corporate Compliance Officer to develop The Arc Allegany-Steuben annual Corporate Compliance Workplan. Such plans will be reviewed with The Arc Allegany-Steuben Corporate Compliance Committee and Board of Directors.

The Corporate Compliance Officer will determine The Arc Allegany-Steuben's risk areas that will become a focus area for organizational compliance based on the internal audits, reviews of laws, regulations and standards and interviews with representatives. Audit techniques may include, but are not limited to:

- Site visits;
- Personnel interviews;
- General questionnaires;
- Medical and clinical record reviews that support claims for reimbursement
- Documentation reviews

Results of internal and external audits are shared with the Corporate Compliance Committee and The Arc Allegany-Steuben Board of Directors.

The Corporate Compliance Officer will monitor for changes in laws, regulations or policies, and ensure communication and additional training is provided as necessary to assure continued compliance.

Reference(s):

18 NYCRR 521.3(a)

SECTION 3: Designated Corporate Compliance Officer

The compliance officer is the focal point of the required provider's compliance program and is responsible for carrying out the day-to-day activities of the compliance program. The compliance officer's responsibilities shall include:

- Overseeing and monitoring the compliance program;
- Drafting, implementing and updating the compliance program no less frequently than annually;
- Reviewing and revising the compliance program, written policies and procedures, and Code of Conduct to incorporate changes based on organizational experience and change to Federal and State laws, rules and regulations;
- Report directly to the governing body, chief executive and compliance committee on the progress of the compliance program;
- Assist with establishing methods to improve efficiency, quality of service, and reducing vulnerability to fraud, waste and abuse;
- Investigating and independently act on matters related to the compliance program including, coordinating and documentation of investigations, reporting, and pursuing corrective action with involved representatives and the State;
- Coordinating the implementation of the fraud, waste and abuse prevention program with Medicaid Managed Care Organizations, as applicable.

The Compliance Officer may be assigned other duties, provided that such other duties do not hinder the compliance officer carrying out their primary responsibilities.

The Arc Allegany-Steuben's designated Corporate Compliance Officer is the Director of Corporate Compliance. This position holds responsibility for the implementation of the Corporate Compliance Program and all required components. The Corporate Compliance Officer has the authority to seek legal counsel as necessary and appropriate to resolve compliance issues.

The Compliance Officer will be allocated sufficient staff and resources to satisfactorily perform their responsibilities. The Compliance Team consists of five full time associates who report directly to the Director of Corporate Compliance, the Associate Director of Compliance, Associate Director of HIPAA and three Compliance Analysts. The Director of Corporate Compliance reports to the Deputy Director of Administrative Services, a member of the Executive Management Team.

The Corporate Compliance Officer will attend The Arc Allegany-Steuben Board of Directors meetings no less than quarterly. Additionally, the Corporate Compliance Officer will have at least two opportunities to attend Executive Session with the Board of Directors.

The Compliance Officer and Compliance Team will have access to all records, documents, facilities and affected individuals that are relevant to carrying out their responsibilities.

SECTION 4: Corporate Compliance Committee

Required providers will designate a compliance committee which shall be responsible for coordinating with the compliance officer to ensure the required provider is conducting all business consistent with the compliance program. The compliance committee duties and responsibilities, membership, designation of a chair and frequency of meetings will be outlined in a committee charter.

The compliance committee will meet the following requirements:

1. Responsibilities will include:
 - coordinating with the compliance officer to ensure written policies, procedures and standards are current, accurate and complete.
 - training required is completed timely.
 - ensuring communication and cooperation by affected individuals on compliance related activities.
 - advocate for the Compliance Officer to be allocated sufficient funding, resources and staff.
 - ensuring effective systems and processes are in place to identify risk areas, overpayments and other issues, and effective policies and procedures are in place for correcting and reporting such issues.
 - and advocating for the adoption and implementation of required modifications to the compliance program.
2. Membership, at a minimum, will be comprised of senior managers.
3. Committee will meet no less frequently than quarterly and will review and update the Committee Charter no less frequently than annually.
4. Report directly and be accountable to the chief executive and governing body.

SECTION 5: Training and Education

The Arc Allegany-Steuben will provide Corporate Compliance Training, including review of the Compliance Code of Conduct, at Orientation and annually thereafter. Training will include the Conflict of Interest Disclosure being completed through the Electronic Training System.

Corporate Compliance Training will be provided to the Board of Directors during Board Orientation and annually thereafter. Training will include acknowledgement of training and the Conflict of Interest Disclosure being completed.

All other Representatives will be provided notification of the Corporate Compliance Program and provided a copy of the Compliance Code of Conduct at the initiation of all business activities and annually thereafter. Notification will include methods to obtain a copy of the full Corporate Compliance Program and methods of contacting the Corporate Compliance Officer directly or anonymously.

Additional training will be provided at any time a need is identified or there are significant changes to the Corporate Compliance Program or any of its components.

Training will include the following:

- Risk areas and organizational experience
- Review of written policies and procedures
- Role of the Compliance Officer and Compliance Committee
- Reporting process and methods, including obligation to report and protection from intimidation and retaliation for good faith participation in the compliance program.
- Review of Disciplinary Standards
- Review of procedures for responding to compliance issues and implementing corrective actions
- Review of the requirements of participating in a Medical Assistance program
- Review of coding and billing requirements, as applicable
- Claim development and submission process, as applicable

Training will be provided in a form and format accessible and understandable to all representatives. Training is provided both in person and through the agency Electronic Learning Management System, which provides reports for attendance and completion.

Training for the Corporate Compliance Officer will include orientation and annual training sessions as offered by trade associations and government oversight agencies.

SECTION 6: Communication of Compliance Concerns or Questions

The Arc Allegany-Steuben encourages all representatives to ask questions regarding the Corporate Compliance Program or its requirements.

The Arc Allegany-Steuben has established multiple lines of communication available and provide for confidentiality of reporting for all representatives. Access to these lines of communication is limited to the Director of Corporate Compliance, Associate Director of Compliance and Associate Director of HIPAA.

All reporter's requesting to remain anonymous will not have their identity disclosed unless the matter is subject to disciplinary actions, being referred to or investigated by Medicaid Fraud Control Unit, Office of Medicaid Inspector General or law enforcement, or disclosure is required by legal proceedings. All reporters are protected by policy for non-intimidation and non-retaliation.

Lines of communication are published in training materials, on the agency website, on posters in all agency sites and are made available to people receiving services at the time of admission to the agency and annually thereafter.

All Arc Allegany-Steuben representatives are responsible to report compliance concerns as soon as possible when a concern is identified. Representatives are encouraged to speak with their direct supervisor or agency contact if possible. If the concern involves the direct supervisor or agency contact, or the reporter is not comfortable going to their direct supervisor or agency contact, then notification should be made utilizing the Chain of Command or Corporate Compliance Officer.

All Arc of Allegany-Steuben representatives can contact the Corporate Compliance Officer through direct or anonymous means.

Direct contact with the Corporate Compliance Officer can be made by phone by calling: (607)776-4146 ext. 2149 – direct phone line for the Director of Corporate Compliance OR

(607)622-1950 – the Corporate Compliance Helpline

E-mail: amyspencer@thearcas.org

Anonymous contact with the Corporate Compliance Officer can be made by: Calling the Corporate Compliance Helpline and not disclosing your personal information.

US Mail: Corporate Compliance Officer

One Arc Way
Bath, NY 14810

Inter-Office Mail addressed to the Corporate Compliance Officer at Industrial Park
When contacting a supervisor or the Corporate Compliance Officer to report a concern the following information should be provided:

1. Your Name – this is optional if reporter wants to remain anonymous
2. Your Contact information - this is optional if reporter wants to remain anonymous
3. Program/Service the concern involves.
4. Person the concern involves.
5. The specific concern involved. If possible, reference the Compliance Code of Conduct for details. Provide as much detail as possible to allow further investigation.
6. Any additional information you feel is important for the concern to be investigated

It is critical to provide enough information to allow an investigation to be conducted on any situation reported. Without knowledge of the specific concern and who it may involve, it is difficult to adequately investigate and evaluate a situation. Providing information on dates, specific associates involved and specific activities that are in violation is helpful to facilitate a thorough investigation.

We encourage staff to use the following steps to resolve any questions or concerns:

Step 1: When in doubt, ask and keep asking until you get an answer that makes sense. Is a law or regulation being violated? Is the action consistent with the Agency values, our Code of Conduct, and our policies? If you know it is wrong, don't do it!

Step 2: Discuss the issue with your immediate Supervisor who knows you and the issues in your workplace. Give your Supervisor a chance to solve the problem. If your Supervisor cannot provide an answer, or if you are not comfortable discussing the issue with your Supervisor, go to the next step.

Step 3: Discuss the problem with a higher-level Supervisor. If the matter is still not resolved to your satisfaction, or you are not comfortable discussing the issue with this level of Supervisor, go to the next step.

Step 4: Discuss the issue with the Corporate Compliance Officer. It is ideal if the Compliance Officer can discuss the problem with you to get a clear understanding of the problem and steps you have taken to resolve the problem. If you are not comfortable with this step, go to the next step.

Step 5: Call our Corporate Compliance Helpline at 607-622-1950. Your call can be anonymous; you are not required to provide your name.

SECTION 7: Identification of Compliance Risk Areas

Title 18 Part 521 of the New York Codes, Rules and Regulations requires that a provider's Compliance Program apply to risk areas of operation including billing, payments, ordered services, medical necessity, quality of care, governance, mandatory reporting, credentialing, contractor, subcontractor, agent or independent contractor oversight, and other risk areas that are or should be reasonably identified by the provider.

The Arc Allegany-Steuben is committed to monitoring business activities and identifying potential compliance risks that would adversely affect the agency. Internal and external auditing activities will be utilized to ensure accurate billing and adherence to accounting rules and regulations. Internal program reviews will be conducted to ensure compliance with rules and regulations of State and Federal oversight agencies.

A Compliance Plan Effectiveness Review will be conducted annually by the Compliance Team and the Corporate Compliance Committee members. Results of the Effectiveness Review will be maintained according to record retention requirements.

The Arc Allegany-Steuben has the policy not to employ, contract with, or conduct business with any individual or entity excluded from participation in Federally sponsored health care programs, such as Medicare and/or Medicaid. Exclusion Checks will be conducted on all representatives at the time of hire and monthly thereafter to ensure all representatives remain eligible to work with the agency.

Monitoring of Medicaid Updates and other funding changes will be an ongoing process implemented within the Corporate Compliance Team. Attendance at Compliance Conferences and trainings will also assist with maintaining knowledge of current risk areas.

SECTION 8: Response to Compliance Risk Areas

Required providers must have established policies and procedures to address compliance concerns and issues as they arise. Issues or concerns may be reported by representatives or identified through routine monitoring of the Compliance Program.

Any reported concerns, whether direct or anonymous, will be investigated and results of the investigation will be documented and communicated to the Corporate Compliance Committee and the Board of Directors. Investigations will remain confidential as much as possible and will include recommendations to prevent further occurrences of a similar nature. All corrective actions will be verified and accepted through committee review.

Plans of Corrective Action will be developed as necessary based on audit and program review results. Results of all audits and program reviews, including corrective actions, will be shared with the Corporate Compliance Committee at routine meetings.

In the event of erroneous billing an audit will be conducted to identify the scope and circumstances of the errors. Once the audit is conducted the results will be reported to the Corporate Compliance Committee and the Board of Directors. Any billing submitted or payments received in error will be repaid to the funding source in compliance with all applicable rules and regulations.

As required, the Arc Allegany-Steuben conducts an Exclusion Check for all representatives at the time of hire or initiation of business relationship. Exclusion Checks are then conducted each month to ensure representatives have not been added for exclusion. Any person or business identified on the Exclusion Check as being ineligible will be notified and business activities with that person or business will immediately cease. Any further business activities will be prohibited with the ineligible person or business until that person or business has resolved the issue and had eligibility reinstated. The person or business must provide proof of resolution and not be identified on an Exclusion Check to resume business activities with the agency.

The Compliance Effectiveness Review results will be shared with the Corporate Compliance Committee and the Board of Directors. Plans of Corrective Action will be developed as necessary based on the results and will be shared with the Corporate Compliance Committee and the Board of Directors.

Any incident of identified or suspected fraud in service provision and billing will be reported to the appropriate State or Federal authority as well as the Corporate Compliance Committee and the Board of Directors.

Disciplinary actions for Corporate Compliance issues and concerns will adhere to the Discipline Policy established. Disciplinary standards will be published and disseminated to all affected representatives. Disciplinary standards will apply fairly and consistently to all levels of personnel.

The Corporate Compliance Officer may seek legal counsel to ensure compliance with all repayments and reports of suspected or actual fraudulent activity.

APPENDIX

PROTOCOL FOR RESPONDING TO GOVERNMENT INQUIRIES

INDEPENDENT CONTRACTOR / AGENTS / VENDORS ACKNOWLEDGEMENT FORM

MEMBERS OF THE ARC ALLEGANY-STEUBEN BOARD OF DIRECTORS ACKNOWLEDGEMENT
FORM

CONTRACTUAL/FINANCIAL ARRANGEMENT WITH PHYSICIANS
WHO ALSO ACT AS A REFERRAL SOURCE

SUMMARY OF FRAUD AND ABUSE LAWS PREPARED BY THE NEW YORK STATE OFFICE OF THE
MEDICAID INSPECTOR GENERAL

ANNUAL CONFLICT OF INTEREST DISCLOSURE
FOR BOARD MEMBERS

APPENDIX A

PROTOCOL FOR RESPONDING TO GOVERNMENT INQUIRIES

To ensure a uniform response to any government inquiry the following protocol is to be followed by all Arc Allegany-Steuben representatives:

1. When an Arc Allegany-Steuben representative is approached by an agent of any governmental or prosecutorial authority, the representative is to immediately notify the Corporate Compliance Officer and the Executive Director.
2. The Corporate Compliance Officer will coordinate The Arc Allegany-Steuben's response to the request.
3. No Arc Allegany-Steuben representative is to release or copy documents in connection with or in response to an investigative demand letter, subpoena, or search warrant without the authorization of the Corporate Compliance Officer.
4. No representative is to remove, alter, create or destroy documents or records including, but not limited to, paper, tape, and computer records, in anticipation of or during an investigation.
5. If an investigator or other government personnel appears in person, representatives are to ask to see and make a copy of his or her identification and business card. If these materials are unavailable, ask for the person's name and office, address and telephone number, and identification number. Call the government personnel's office to confirm his or her identity and authority. If more than one person appears, determine which person is in charge and ask for his or her identifying information.

SEARCH WARRANTS

1. A search of The Arc Allegany-Steuben's premises by government representatives may not be conducted without a legally valid search warrant. A search warrant is a document that permits government agents to search and seize tangible property that is described in the search warrant or located in an area specifically identified as covered by the search warrant.
2. If a government personnel presents a search warrant, the representative is to make a copy of the document and immediately request that the government personnel allow you to contact the Corporate Compliance Officer or to determine the validity of the warrant. If the government personnel have a legally valid search warrant, representatives may not stop the search. Once the validity of the warrant has been determined, the Corporate Compliance Officer will instruct the representative on how to proceed.
3. After the Corporate Compliance Officer or Executive Director has determined that the search warrant is valid, the following procedures are to be followed:
 - a. Appoint someone on site to be in charge. That person will be responsible for communicating with the government representative.
 - b. Remember that it is a crime to obstruct an agent in the lawful execution of a valid search warrant. Remain calm, polite, and observant. You may ask questions. Do not, under any circumstances, alter or destroy documents

- sought in an investigation; falsely deny knowledge of information; corruptly influence another person to exercise the privilege against self-incrimination; or intimidate a witness with or without the intent of influencing behavior. If you see another associate engaging in this behavior, notify the Corporate Compliance Officer immediately.
- c. It is very important to keep a thorough list of all documents that the government personnel is seizing or copying. An associate should be assigned to accompany each government personnel during his or her search. That associate should take notes of everything the government representatives inspect but do not seize or copy. The associate should also take notes of any conversations between or among the government representatives and all conversations between the government representatives and other associates or agency representatives.
 - d. Obtain a detailed receipt from the government personnel of all documents/items, of which the government has obtained a copy, including the number of pages copied for reimbursement purposes. If the government personnel wish to take original documents, ask if those documents may first be copied. If the government personnel will not allow copies to be made, call the Corporate Compliance Officer or Executive Director. If you cannot reach the Corporate Compliance Officer or Executive Director, ask if you can first make a list of all documents the government is taking.
 - e. The government representatives may seek to seize documents or items whose loss will impede the day-to-day operations of The Arc Allegany-Steuben. If the representative wants to seize any computers, you should ask if you may make a copy of all files. You should contact the Corporate Compliance Officer or Executive Director to inform him/her that the government is seizing computers. If the government personnel wish to seize individual records, ask if those records may be copied so that individual care or confidentiality will not be compromised. Inform the Corporate Compliance Officer or Executive Director that the government is seizing individual records.
 - f. Associates are required to answer questions concerning the location of documents if they know the location of the documents in question.
 - g. Associates are not required to answer other questions. You may tell the government personnel that you prefer to wait until the Corporate Compliance Officer, Executive Director or legal counsel is present.
 - h. If you are asked to sign an affidavit of any kind on behalf of the Agency, do not comment as to the validity of its contents and explain that you are not authorized to sign any document on behalf of the Agency prior to review by The Arc Allegany-Steuben's legal counsel.
 - i. It is important that all associates (1) cooperate with the government representatives and (2) provide accurate information to the government representatives.
 - j. Providing inaccurate statements to government representatives may result in obstruction of justice charges.

REQUESTS FOR INTERVIEWS

1. During a government personnel's first encounter with The Arc Allegany-Steuben, the government personnel may suggest that agency representatives must speak with him/her or consent to an interview.
2. Government personnel may not threaten agency representatives in any way or require an agency representative to speak with him/her immediately. Agency representatives have the right to schedule an appointment at a later time to speak with the government personnel. Agency representatives also have the right to decline to be interviewed altogether.
3. Agency representatives are entitled to have someone with them during an interview with a government personnel.
4. Agency representatives are, of course, free to speak with the government personnel. If an agency representative speaks with the government personnel before notifying the Corporate Compliance Officer, the agency requests that the agency representative make the notification as soon as possible after the interview. Agency representatives are strongly encouraged to take notes during the interview.
5. During the interview, agency representatives should follow these guidelines:
 - a. Always tell the truth. If you do not recall something, are uncertain or have no knowledge about the topic being discussed, say so.
 - b. Be careful to answer questions completely, accurately, and concisely so that there will be no misunderstandings as to what you are saying. Indicate whether the information you are providing is first-hand knowledge, something you have heard, or speculation. It is good practice to avoid speculation, but if you must speculate, it is important to make sure you let the government personnel know that you are speculating.
 - c. Contact the Corporate Compliance Officer or Executive Director as soon as possible after the interview.

COMMUNICATIONS REGARDING A GOVERNMENT INQUIRY OR INVESTIGATION

1. Do not discuss this matter with anyone without first receiving permission from the Corporate Compliance Officer. Innocent parties may be hurt by rumors regarding the government contact, and The Arc Allegany-Steuben will not condone the spreading of such rumors.
2. If you receive any inquiries from the media or any person or organization, you should refer the inquiries to the Marketing and Development Department. Do not attempt to provide any explanation other than to state that the questions regarding the investigation will be answered by Executive Management.

APPENDIX B

AFFECTED INDIVIDUAL_ACKNOWLEDGEMENT FORM

The Arc Allegany-Steuben has developed a Corporate Compliance Program that states the organization and its Representatives will adhere to applicable federal, state, and local laws and regulations, and internal policies and procedures. This document serves as notification of our Compliance Plan and your acknowledgement of the Compliance Code of Conduct.

Our Corporate Compliance Program is a combination of policy and procedure that assists our organization to monitor, detect, and correct actions that are not in compliance with applicable laws or our own policies and procedures.

As our agent, we expect that you will act in compliance with the laws that are applicable to our organization and to your organization and in compliance with our policies and procedures, particularly our Compliance Code of Conduct that sets forth the overarching principles for conducting our business with integrity based on sound ethical and legal standards.

As our agent, we also expect you to report any suspected or potential violations of law or our policies and procedures of which you become aware by contacting our Executive Director at 585-593-5700, our Corporate Compliance Officer at 607-776-4146 ext. 2149 or our Corporate Compliance Helpline at 607-622-1950.

As our agent, we expect you to understand your role in the Corporate Compliance Program of The Arc Allegany-Steuben and we expect you to review any policies and procedures that are applicable to you and your organization. You may contact the Executive Director or the Corporate Compliance Officer for any questions or clarifications of your responsibilities.

* * * * *

- ✓ I acknowledge that on behalf of myself and my organization that I have read, have had an opportunity to ask questions about, and that I understand The Arc Allegany-Steuben Compliance Code of Conduct and the policies and procedures of The Arc Allegany-Steuben's Corporate Compliance Program that are applicable to the services that are provided to The Arc Allegany-Steuben.
- ✓ I understand and agree that I and all those in my organization who provide services to The Arc Allegany-Steuben must comply with The Arc Allegany-Steuben's Corporate Compliance Program including the Compliance Code of Conduct and all laws, regulations, policies, procedures, and other guidance applicable to the services that are provided to The Arc Allegany-Steuben.

- ✓ I agree on behalf of myself and my organization to fully cooperate with the implementation of The Arc Allegany-Steuben's Corporate Compliance Program, to participate in any auditing or monitoring processes, and to report any instances of possible violations of law, regulations, or policies that are applicable to The Arc Allegany-Steuben of which I become aware.
- ✓ I acknowledge that The Arc Allegany-Steuben maintains an anonymous helpline for the purpose of receiving notifications of possible violations of law, regulation, and The Arc Allegany-Steuben's Corporate Compliance Program. Helpline: (607)622-1950
- ✓ I understand that my failure to report any concerns regarding possible violations of law, regulations, or the Corporate Compliance Program may result in corrective action, up to and including termination of my agreement with The Arc Allegany-Steuben.
- ✓ I attest on behalf of myself and/or my organization that I am not currently excluded from participation in federal or state health care programs, am not the subject of any pending exclusion proceeding, and have not been adjudicated or deemed to have committed any action that could subject me or my organization to exclusion from government programs such as Medicare or Medicaid.
- ✓ I shall notify The Arc Allegany-Steuben within three (3) business days of receipt of notice of (a) exclusion or proposed exclusion from a state or federal health care program, or (b) adjudication or other determination that I or my organization has committed any action which could lead to exclusion from a government program.
- ✓ I acknowledge that The Arc Allegany-Steuben may terminate my contract immediately upon notice that I or my organization has been excluded from participation in a state or federal health care program or that I or my organization has been adjudicated or determined to have committed an action which could subject it to mandatory exclusion.

Signature

Print Name

Title

Company Name

Date

APPENDIX C

MEMBERS OF THE ARC ALLEGANY-STEUBEN BOARD OF DIRECTORS ACKNOWLEDGEMENT FORM

- ✓ I acknowledge that I have read, have had the opportunity to ask questions about, and that I understand The Arc Allegany-Steuben's Corporate Compliance Program and The Arc Allegany-Steuben's Compliance Code of Conduct.
- ✓ I agree to comply with The Arc Allegany-Steuben's Corporate Compliance Program and The Arc Allegany-Steuben's Compliance Code of Conduct and all laws, regulations, policies, procedures, and other guidance applicable to the responsibilities of my membership on The Arc Allegany-Steuben Board of Directors.
- ✓ I understand that, as a member of the Board of Directors, I have a responsibility to oversee and support the implementation of The Arc Allegany-Steuben's Corporate Compliance Program, including participating in monitoring, auditing, investigations, and other activities related to compliance.
- ✓ I understand that my failure to report any concerns regarding possible violations of law, regulations, or the Corporate Compliance Program may result in corrective action or termination of my Board position.

Signature

Print Name

Title

Date

APPENDIX D

Contractual/Financial Arrangement with Physicians Who Also Act as a Referral Source

EMPLOYMENT AGREEMENTS

1. The Arc Allegany-Steuben may wish to employ physicians to furnish services to people served. Prior to The Arc Allegany-Steuben employing any physician, compliance with this Policy is required. Since these arrangements can be complex counsel may be contacted if questions arise.
2. All arrangements with physicians to serve as associates must be for bona fide employment, must be approved by the Corporate Compliance Officer, and must:
 - a. Be in writing;
 - b. Provide for compensation consistent with fair market value determined by an analysis completed.
 - c. Not base compensation upon the value or volume of referrals or any referral relationship between the parties; and
 - d. Be commercially reasonable even if no referrals were made to The Arc Allegany-Steuben.
3. The Director of Human Resources shall be responsible for conducting a determination of whether the compensation included in an employment agreement is consistent with the fair market value of the services being provided under the agreement. A written assessment of the determination that the compensation is consistent with fair market value, and any supporting documentation, should be kept on file by Human Resources. Amounts may vary depending upon the particularities of the physician's education, expertise, experience and geographic location.
4. After review by the Corporate Compliance Officer, the employment agreement may be approved and executed by the Director of Human Resources /Division Director.

Human Resources shall be responsible for maintaining the fully executed copies of the employment agreements.

PERSONAL SERVICES AGREEMENTS

1. The Arc Allegany-Steuben may wish to enter into contractual arrangements with physicians. Such arrangements could include contracts for services as a medical director or consultant. Such arrangements are referred to as "personal services agreements" or "independent contractor agreements," and they require compliance with this Policy. Since these arrangements can be complex counsel may be contacted if questions arise.

2. All personal services agreements with physicians must be approved by the Corporate Compliance Officer and must meet the following requirements:
 - a. The agreement must be in writing and signed by the parties;
 - b. The agreement must specify with particularity the services to be provided and cover all the services provided by the physician to The Arc Allegany-Steuben;
 - c. If the agreement provides for services on a periodic, sporadic or part-time basis, rather than on a full-time basis for the term of the agreement, the agreement must specify exactly the schedule of such intervals, their precise length, and the exact charge for such intervals. The only exception to this requirement is for agreements for Medical Director services providing for compensation on an hourly basis; for these Medical Director agreements, time records must be kept, and the physician must submit invoices in order to receive payment for services rendered;
 - d. The agreement must have a term of at least one year. The agreement must provide for the aggregate compensation paid to the physician over the term of the agreement, except in the case of per-hour compensation arrangements for Medical Director services. Compensation must be set in advance and be consistent with fair market value in an arms-length transaction as determined by the analysis completed
 - e. Compensation must not be determined or modified in a manner that takes into account the volume or value of any referrals or other business generated between The Arc Allegany-Steuben and the physician;
 - f. The services performed under the agreement must not involve the counseling or promotion of a business arrangement or other activity that violates any state or federal law; and
 - g. The aggregate services contracted for must not exceed those which are reasonably necessary to accomplish the commercially reasonable business purpose of the services.
3. The Director of Human Resources shall be responsible for conducting a determination of whether the compensation included in a personal services agreement is consistent with the fair market value of the services being provided under the agreement. Amounts may vary depending upon the particularities of the physician's education, expertise, experience and geographic location. A written assessment of the determination that the compensation is consistent with fair market value, and any relevant supporting documentation, should be kept on file by Human Resources. Fair market value shall be supported by an independent determination of fair market value or by reference to an industry-recognized benchmark.
4. After review by the Corporate Compliance Officer, the personal services agreement may be approved and executed by the Director of Human Resources /Division Director.

Human Resources shall be responsible for maintaining the fully executed copies of the personal services agreements.

EQUIPMENT AND SPACE RENTAL ARRANGEMENTS

1. The Arc Allegany-Steuben has determined that it may wish to enter into lease agreements with certain physicians whereby these physicians lease either office space or equipment from The Arc Allegany-Steuben. Such arrangements are referred to as “lease agreements” or “rental agreements,” and they require compliance with this Policy. Since these arrangements can be complex, counsel may be contacted if questions arise.
2. All lease agreements with referring physicians must be approved by the Corporate Compliance Officer and must meet the following requirements:
 - a. The agreement must be in writing and signed by the parties;
 - b. The agreement must specify with particularity the equipment/space covered; if the lease is intended to provide the lessee with access to the equipment/space for periodic intervals of time, rather than on a full-time basis for the term of the lease, the lease must specify exactly the schedule of such intervals, their precise length, and the exact rent for such intervals;
 - c. The equipment/space must be used exclusively by the and not shared with or used by The Arc Allegany-Steuben or any person or entity related to The Arc Allegany-Steuben;
 - d. The agreement must provide for aggregate compensation paid over the term of the agreement, set in advance, and consistent with fair market value in an arms-length transaction as determined by the analysis completed;
 - e. Compensation must not be determined or modified in a manner that takes into account the volume or value of any referrals or other business generated between The Arc Allegany-Steuben and the physician;
 - f. The lease must be commercially reasonable even if no referrals were made between The Arc Allegany-Steuben and the physician;
 - g. The lease may not provide for services to be performed under the agreement that involve the counseling or promotion of a business arrangement or other activity that violates any state or federal law; and
 - h. The aggregate equipment/space leased may not exceed that which is reasonable and necessary for the legitimate business purposes of the lease and the lease must set out all the equipment/space leased between the physician and The Arc Allegany-Steuben.
3. The Facilities Director shall determine whether the payments made under the lease agreement are consistent with the fair market value for the office space or equipment being provided under the agreement. For purposes of determining the fair market value of space rentals, fair market value means the value of rental property for general commercial purposes, but shall not be adjusted to reflect the additional value that one party (The Arc Allegany-Steuben or the physician) would attribute to the property as a result of its proximity or convenience to

sources of referrals. For purposes of determining the fair market value of equipment, fair market value means the value of the equipment when obtained from a manufacturer or professional distributor, but shall not be adjusted to reflect the additional value one party (The Arc Allegany-Steuben or the physician) would attribute to the equipment as of result of its proximity or convenience to sources of referrals. A written assessment of the determination that the compensation is consistent with fair market value should be kept on file with the lease agreement.

4. After review by the Corporate Compliance Officer, the lease agreements may be approved and executed by the Director of Facilities/Division Director.
5. If the term is for less than one year or if the agreement is terminated with or without cause prior to the end of the first year of the agreement, then the parties may not enter into a similar agreement until the one-year term has passed.
6. The Executive Assistant shall be responsible for maintaining the fully executed copies of the lease agreements.

APPENDIX E

Summary of Fraud and Abuse Laws Prepared by The New York State Office of The
Medicaid Inspector General

FEDERAL & NEW YORK STATUTES RELATING TO FILING FALSE CLAIMS

I. FEDERAL LAWS

False Claims Act (31 U.S.C. §§3729-3733)

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

(a) Any person who

- (1) knowingly presents, or causes to be presented, to an officer or employee of the United States Government or a member of the Armed Forces of the United States a false or fraudulent claim for payment or approval;
- (2) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government;
- (3) conspires to defraud the Government by getting a false or fraudulent claim paid or approved by the Government; or
- (4) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease 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 \$10,781 and not more than \$21,563, plus 3 times the amount of damages which the Government sustains because of the act of that person:

(a) 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;

31 U.S.C. § 3729

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 that he/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 who 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.

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.

Administrative Remedies for False Claims (31 U.S.C. 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, then 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, not 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’s false claims laws fall into two categories: civil and administrative; and criminal laws. Some apply to recipient false claims and some apply to provider false claims, and while most are specific to healthcare or Medicaid, some of the “common law” crimes apply to areas of interaction with the government.

A. CIVIL AND ADMINISTRATIVE LAWS

NY False Claims Act (State Finance Law, §§187-194)

The New York False Claims Act is similar to the Federal False Claims Act. It imposes penalties and fines on individuals and entities that file false or fraudulent claims for payment from any state or local government, including health care programs such as Medicaid. The penalty for filing a false claim is \$6,000 - \$12,000 per claim and the recoverable damages are three times the value of the amount falsely received. In addition, the false claim filer may have to pay the government's legal fees.

The Act allows private individuals to file lawsuits in state court, just as if they were state or local government parties. If the suit eventually concludes with payments back to the government, the person who started the case can recover 25-30% of the proceeds if the government did not participate in the suit and 15-25% if the government did participate in the suit.

Social Services Law §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 \$10,000 per violation. If repeat violations occur within 5 years, a penalty up to \$30,000 per violation may be imposed if they involve more serious violations of Medicaid rules, billing for services not rendered or providing excessive services.

Social Services Law §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

Social Services Law §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, unless such act constitutes a violation of a provision of the penal law of the state of New York, in which case he shall be punished in accordance with the penalties fixed by such law.

Social Services Law § 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 and 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.

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. It 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.

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.

Penal Law Article 176, Insurance Fraud

Applies to claims for insurance payment, 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.

Penal Law Article 177, Health Care Fraud

Applies to claims for health insurance payment, including Medicaid, and contains five crimes:

- a. Health care fraud in the 5th degree is knowingly filing, with intent to defraud, a claim for payment that intentionally has false information or omissions. It is a Class A misdemeanor.
- b. Health care fraud in the 4th degree is filing false claims and annually receiving over \$3,000 in aggregate. It is a Class E felony.
- c. Health care fraud in the 3rd degree is filing false claims and annually receiving over \$10,000 in the aggregate. It is a Class D felony.
- d. Health care fraud in the 2nd degree is filing false claims and annually receiving over \$50,000 in the aggregate. It is a Class C felony.
- e. Health care fraud in the 1st degree is filing false claims and annually receiving over \$1 million in the aggregate. It is a Class B felony.

III. WHISTLEBLOWER PROTECTION

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

The FCA provides protection to *qui tam* relators who are discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of their employment as a result of their furtherance of an action under the FCA. 31 U.S.C. 3730(h). Remedies include reinstatement with comparable seniority as the *qui tam* relator would have had but for the discrimination, two times the amount of any back pay, interest on any back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

NY False Claim Act (State Finance Law §191)

The False Claim Act also provides protection to *qui tam* relators who are discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of their employment as a result of their furtherance of an action under the Act. Remedies include reinstatement with comparable seniority as the *qui tam* relator would have had but for the discrimination, two times the amount

of any back pay, interest on any back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

New York Labor Law §740

In addition to provisions contained in the Federal and New York State False Claim Acts, this section offers protections to associates who may notice and report inappropriate activities. Under New York State Labor Law §740, an employer may not take any retaliatory personnel action against an employee because the employee:

- discloses or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer that is in violation of law, rule or regulation that presents a substantial and specific danger to the public health or safety, or which constitutes health care fraud;
- provides information to or testifies before any public body conducting an investigation, hearing or inquiry into any such violation of a law, rule or regulation by such employer; or
- objects to or refuses to participate in any such activity, policy or practice in violation of a law, rule or regulation.

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 associates who are the subject of a retaliatory action to bring civil action in court and seek relief such as injunctive relief to restrain continued retaliation: reinstatement, back-pay and compensation of reasonable costs. The law also provides that associates who bring an action without basis in law or fact may be held liable to the employer for its attorney's fees and costs.

New York Labor Law §741

Under this section, an employer may not take any retaliatory personnel 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 patient care. The employee's disclosure is protected only if the employee first brought up the matter with a supervisor and gives the employer a reasonable opportunity to correct the alleged violation, unless the danger is imminent to the public or patient and the employee believes in good faith that reporting to a supervisor would not result in corrective action. The law allows associates 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.

APPENDIX F

Annual Conflict of Interest Disclosure for Board Members

Name: _____

Office or Board Position Held: _____

In responding to these questions, understand that a “yes” response does not imply that the relationship or transaction was inappropriate.

1. Are you an officer or director of any corporation with which this organization has had a business relationship? ☐ Yes ☐ No

If your response is “yes”, please list the names of such corporations, the office held, and the approximate dollar amount of business involved with The Arc Allegany-Steuben.

Name of Corporation	Office Held	Approximate Amount of Business Dollar
_____	_____	_____
_____	_____	_____
_____	_____	_____

2. Do you, or does any member of your family, have a financial interest in, or receive any remuneration or income from, any business organization with which The Arc Allegany-Steuben has business dealings? ☐ Yes ☐ No

If your answer is “yes”, please supply the following information:

- A. Names of the businesses in which such interest is held and the person(s) by whom such interest is held:

1. _____
2. _____
3. _____

- B. The nature and amount of each financial interest, remuneration, or income:

1. _____
2. _____
3. _____

3. Did you, or any member of your family, receive during the past 12 months any gifts or loans from any source from which The Arc Allegany-Steuben purchases goods or services, or with which The Arc Allegany-Steuben has significant business dealings? ☐ Yes ☐ No

If your response is "yes", list the gifts or loans.

Name of Income Source	Item	Approximate Value
_____	_____	_____
_____	_____	_____
_____	_____	_____

4. Were you involved in any other activity during the past year that might be interpreted as a possible conflict of interest? ☐ Yes ☐ No

If yes, please describe: _____

5. Did you, during the past year, use your position on this nonprofit's board to gain advantage for yourself, your family, friends, or business associates in any way? ☐ Yes ☐ No

I certify that the foregoing information is true and complete to the best of my knowledge.

Signature

Date