

NOTICE - DETECTION AND PREVENTION OF FRAUD, WASTE, AND ABUSE

The Brooklyn Hospital Center is committed to preventing and detecting fraud, waste, or abuse. To this end, TBHC maintains a compliance program and strives to educate its work force on fraud and abuse laws, including the importance of submitting accurate claims and reports to the Federal and State governments.

In particular, TBHC prohibits the knowing submission of a false claim for payment from a Federal or State funded health care program. Such a submission is a violation of Federal and State law and can result in significant administrative and civil penalties under the Federal False Claims Act.

In addition, in New York State the submission of a false claim can result in civil and criminal penalties under the New York State False Claims Act, portions of the New York State Social Services Law and Penal Law, among other State statutes.

PROCEDURE:

Reporting Suspected Violations Of Law

Any employee who reasonably suspects or is aware of the preparation or submission of a false claim or report or any other potential fraud, waste, or abuse related to a Federal or State funded health care program is **required** to report such information. Any employee of TBHC who reports such information will have the right and opportunity to do so anonymously and will be protected against retaliation for coming forward with such information both under TBHC's policies and procedures and Federal and State law. (However TBHC retains the right to take appropriate action against an employee who has participated in a violation of Federal or State law or hospital policy.)

Employees are encouraged to report problems or concerns to their supervisor. If an employee believes that his/her supervisor is not responding within a reasonable period of time, or if the employee does not feel comfortable reporting the issue to his/her supervisor, the employee shall bring these concerns to TBHC's compliance officer at 718-250-8458.

Concerns may also be reported via the Compliance Helpline, which is available 24 hours a day. Calls to the Helpline may be made anonymously. The Helpline number is 866-420-3438. Concerns may also be reported on the internet, at www.tbhc.ethicspoint.com.

As an organization, TBHC commits itself to investigate any suspicion of fraud, waste, or abuse swiftly and thoroughly and requires all employees to assist in such investigations. Failure to report and disclose or assist in an investigation of fraud and abuse is a breach of the employee's obligations to TBHC and may result in disciplinary action.

FEDERAL AND STATE STATUTES:

The following is a summary of the Federal False Claims Act, the Program Fraud Civil Remedies Act and certain relevant State laws.

Federal False Claims Act

The Federal False Claims Act, 31 USC §3279, *et seq*, establishes liability for any person who engages in certain acts, including:

- knowingly presenting or causing to be presented a false or fraudulent claim to the Federal government for payment;
- knowingly making, using, or causing to be made or used, a false statement to get a false or fraudulent claim paid by the Federal government; or
- conspiring to defraud the Federal government by getting a false or fraudulent claim allowed or paid.

Under the Federal False Claims Act, a person acts "knowingly" if s/he:

- has actual knowledge of the information;
- acts in deliberate ignorance of the truth or falsity of the information; or
- acts in reckless disregard of the truth or falsity of the information.

There is no requirement that the person specifically intended to defraud the government through his or her actions.

Under the Federal False Claims Act, a "claim" is any request or demand for money or property if the Federal government provides any portion of the money or property in question. This includes requests or demands submitted to a contractor of the Government and includes Medicaid and Medicare claims.

A violation of the Federal False Claims Act may result in a civil penalty between \$5,500 and \$11,000 for each false claim submitted, plus up to three times the amount of the damages sustained by the Government because of the violation. In addition, the United States Department of Health and Human Services (HHS) Office of the Inspector General (OIG) may exclude the violator from participation in Federal health care programs.

The False Claims Act allows a private person to file a *qui tam* lawsuit on behalf of the Federal government. This person, also called a relator or whistleblower, must file his or her lawsuit under seal in a federal district court. The government may decide to intervene with the lawsuit, in which case the United States Department of Justice will direct the prosecution. If the government does not decide to intervene, the relator may still continue the lawsuit independently.

If a *qui tam* lawsuit is successful, the relator may receive a percentage of the recovery, depending on the level of the government's participation and other factors, as well as reasonable attorney's fees and costs. In addition, there can be no retaliation against the relator for filing or participating in the lawsuit in good faith. However, any person who brings a clearly frivolous case can be held liable for the defendant's attorney's fees and costs.

Please note that if an employee never reports his/her concerns through TBHC's internal compliance processes so that TBHC can address these concerns, the employee may be in breach of their duty of loyalty to the hospital. For this reason the hospital has the reporting mechanisms described in this policy that employees may use to report such concerns.

Federal Program Fraud Civil Remedies Act of 1986

The Program Fraud Civil Remedies Act of 1986, 31 USC §§3801, *et seq.*, is similar to the False Claims Act, establishing an administrative remedy against any person who presents or causes to be presented a claim or written statement that the person knows or has reason to know is false, fictitious, or fraudulent to certain Federal agencies, including HHS, and again, includes Medicaid and Medicare claims.

Similar to the False Claims Act, a person who "knows or has reason to know" is defined as one who:

- has actual knowledge of the information;
- acts in deliberate ignorance of the truth or falsity of the information; or
- acts in reckless disregard of the truth or falsity of the information.

Once again, there is no necessary proof of specific intent to defraud the government.

A violation of the Program Fraud Civil Remedies Act can result in a civil monetary penalty of up to \$5,500 per false claim and an assessment of twice the amount of the false claim. The penalty can be imposed through an administrative hearing after investigation by HHS and approval by the United States Attorney General.

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

The New York State False Claims Act provides that any person who knowingly presents, or causes to be presented, to any employee, officer, or agent of the State or a local government a false or fraudulent claim for payment or approval; 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 State or a local government; conspires to defraud the State or a local government by getting a false or fraudulent claim allowed or paid; or 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 State or a local government is liable to the State of New York for a civil penalty of not less than \$6,000 and not more than \$12,000, plus three times the amount of damages that the State sustains because of the act of that person; and to any local government for three times the amount of damages sustained by such local government because of the act of that person.

The Act also provides that private parties may bring an action on behalf of the State or a local government. These private parties, known as "qui tam relators," may share in a percentage of the proceeds from a NYS FCA action or settlement.

The Act provides protection to an employee of any private or public employer who is discharged, demoted, suspended, threatened, harassed, or otherwise discriminated against in the terms and conditions of employment by his or her employer because of lawful acts taken by the employee in furtherance of an action under the NYS FCA. Remedies for such discrimination include reinstatement, two times back pay, and compensation for any special damages sustained as a result of the discrimination.

Under New York Social Services Law §145, any person who submits false statements or deliberately conceals material information in order to receive public assistance, including Medicaid, is guilty of a misdemeanor. Under New York Social Services Law §145-b, it is unlawful to knowingly make a false statement or representation, or to deliberately conceal any material fact, or engage in any other fraudulent scheme or device, to obtain or attempt to obtain payments under the New York State Medicaid program. For a violation of this law, the local Social Services district or the State has a right to recover civil damages equal to three times the amount by which any figure is falsely overstated. In the case of non-monetary false statements, the local Social Services district or State may recover three times the damages (or \$5,000, whichever is greater) sustained by the government due to the violation.

If any person applies for or receives public assistance, including Medicaid, by intentionally making a false or misleading statement, or intending to do so, under Social Services Law §145-c the person's or family's needs are not taken into account for between six months and five years, depending on the number of offenses.

The law also empowers the New York State Department of Health to impose a monetary penalty on any person who, among other actions, causes Medicaid payments to be made if the person knew or had reason to know that:

- the payment involved care, services, or supplies that were medically improper, unnecessary, or excessive;
- the care, services or supplies were not provided as claimed;
- the person who ordered or prescribed the improper, unnecessary, or excessive care, services, or supplies was suspended or excluded from the Medicaid program at the time the care, services, or supplies were furnished; or

- the services or supplies were not in fact provided.

The monetary penalty shall not exceed \$2,000 for each item or service in question, unless a penalty under the section has been imposed within the previous five years, in which case the penalty shall not exceed \$7,500 per item or service.

Under New York Social Services Law §366-b (2), any person who, with intent to defraud, presents for allowance or payment any false or fraudulent claim for furnishing services or merchandise, or knowingly submits false information for the purpose of obtaining compensation greater than that to which s/he is legally entitled for furnishing services or merchandise shall be guilty of a class A misdemeanor. If such an act constitutes a violation of a provision of the penal law of the state of New York, the person committing the act shall be punished in accordance with the penalties fixed by such law.

New York Penal Law Article §155, defines the crime of larceny. It 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.

New York Penal Law §175 relates to filing false information or claims and has been applied in Medicaid fraud prosecutions. New York Penal Law §176 applies to claims for insurance payment, including Medicaid or other health insurance, and contains six crimes: Insurance Fraud in the first to fifth degrees and aggravated insurance fraud, ranging from a Class A misdemeanor to a Class D felony.

In addition, New York Penal Law §177 establishes the crime of Health Care Fraud. A person commits such a crime when, with the intent to defraud Medicaid (or other health plans, including non-governmental plans), s/he knowingly and willfully provides false information or omits material information for the purpose of requesting payment for a health care item or service and, as a result of the false information or omission, receives such a payment in an amount to which s/he is not entitled. Health Care Fraud is punished with fines and jail time based on the amount of payment inappropriately received due to the commission of the crime; the higher the payments in a one year period, the more severe the punishments, which currently range up to 25 years if more than \$1 million in improper payments are involved.

New York law also affords protections to employees who may notice and report inappropriate activities. Under New York Labor Law §740 and §741, an employer (and specifically a health care employer) shall 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 which violation creates and 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 employees who are the subject of a retaliatory action to bring a civil action in court and seek relief such as injunctive relief to restrain continued retaliation; reinstatement, back-pay and compensation of reasonable costs. The law also provides that employees who bring an action without basis in law or fact may be held liable to the employer for its attorney fees and costs.