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TITLE: FEDERAL DEFICIT REDUCTION ACT OF 2005 FRAUD AND ABUSE PROVISIONS

POLICY:

NewYork- Presbyterian Hospital (NYP or the Hospital) is committed to preventing and detecting any fraud, waste, or abuse related to Federal and State health care programs. To this end, NYP maintains a vigorous 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 furtherance of this policy and to comply with Section 6032 of the Deficit Reduction Act of 2005, NYP provides the following information about its policies and procedures and the role of certain federal and state laws in preventing and detecting fraud, waste and abuse in federal health care programs.

PURPOSE:

The purpose of this policy is to comply with the federal Deficit Reduction Act of 2005. This Act requires that NYP, provide its employees, staff and vendors with specific information regarding laws governing fraud and abuse, as well as the Hospital's policies and procedures for detecting and preventing fraud and abuse.

APPLICABILITY:

All Employees, Medical Staff

PROCEDURE:

NYP has instituted a compliance program for detecting and preventing fraud. The Office of Corporate Compliance oversees the program and, depending on the nature of allegations raised, works collaboratively with the Department of Internal Audit and the Office of Legal Affairs to conduct investigations in these areas.

As part of the commitment to ethical and legal conduct, employees are required to bring immediately to the attention of their supervisor, the Corporate Compliance Officer or the Office of Legal Affairs, information regarding suspected improper conduct. Employees may also call the Compliance Helpline at (888)308-4435 to discuss concerns about possible violations of the law or institutional policy. NYP will investigate allegations of fraud, waste, or abuse swiftly and thoroughly and will do

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so through its internal compliance programs and processes. In order to make sure that the allegations are fully and fairly investigated, the Hospital requires that all employees fully cooperate in the investigation.

NYP devotes substantial resources to investigate allegations of fraud and abuse and, therefore, believes that all employees should bring their concerns to the institution first so it can redress and correct any fraudulent activity. Any employee 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 NYP's internal compliance policies and procedures and Federal and State law. However, NYP retains the right to take appropriate action against an employee who has participated in a violation of Federal or State law or hospital policy.

While the Hospital expects its employees to bring their concerns to it, certain State and Federal laws discussed more fully below provide that any private citizen may bring their concerns of fraud and abuse directly to the government. Please note, however, that an employee who fails to report suspected or known violations of the law or Hospital policies and procedures may be subject to corrective action.

A Summary of Federal and State Laws regarding Fraud and Abuse is attached to this Policy. Further information and materials relating to the Hospital's policies for detecting and preventing fraud are available on the NYP Infonet. The Hospital Policies and Procedures which address this issue are as follows:

- Billing and Claims Reimbursement
- Business Travel and Entertainment
- Code of Conduct
- Conflict of Interest
- Corporate Compliance Auditing and Monitoring
- Corporate Compliance Plan
- Employee Compliance Helpline Operations
- Employee Compliance Training
- Financial Policies
- Medical Sales Representatives
- Non -Retaliation
- Organizational Ethics
- Sanction Screening

RESPONSIBILITY:

Office of Corporate Compliance

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REFERENCES:

Deficit Reduction Act of 2005

POLICY DATES:

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FEDERAL & NEW YORK STATUTES RELATING TO FILING FALSE CLAIMS

I. FEDERAL LAWS

False Claims Act (31 USC §§3729-3733)

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

Any person who (1) knowingly presents, or causes to be presented, to an officer or employee of the United States Government ... 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 (7) 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 ...

For purposes of this section, the terms "knowing" and "knowingly" mean that a person, with respect to information (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 no proof of specific intent to defraud is required. (31 U.S.C. § 3729)

The False Claims Act imposes liability on any person who submits a claim to the federal government that he or she knows (or should know) is false. An example may be a physician who submits a bill to Medicare for medical services she knows she has not provided. The False Claims Act also imposes liability on an individual who knowingly submits a false record in order to obtain payment from the government. An example may be a government contractor who submits records that he knows (or should know) are false and that falsely 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 may be a hospital that obtains interim payments from Medicare throughout the year, and then knowingly files a false cost report at the end of the year in order to avoid making a refund to the Medicare program.

The FCA provides that private parties may bring a lawsuit on behalf of the United States. Such persons, known as "qui tam relators," may share in the percentage of the proceeds from an FCA action or settlement. A qui tam relator, when the Government has intervened in the lawsuit, may 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, the relator may 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 USC 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 \$10,781 for each claim, plus an amount equal to twice the amount of the claim.

II. NEW YORK STATE LAWS

A. CIVIL AND ADMINISTRATIVE LAWS

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

The NYS 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 between two and three times the value of the amount falsely received. In addition, the party that files the false claim may have to pay the government's legal fees.

Private individuals may file lawsuits in state court on behalf of state or local government parties. If, as a result of the lawsuit, the party that files a false claim is required to make payments back to the government, the person who initiated the case may recover 25-30% of the proceeds if the government did not participate in the lawsuit, or 15-25% if the government did participate.

Social Services Law §145-b False Statements

It is a violation of this law 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, the local Social Services district, and the Department of Health may recover amounts incorrectly paid and impose fines and penalties.

Social Services Law §145-c Sanctions

This law provides for sanctions to be imposed on a person who applies for or receives public assistance, including Medicaid, by intentionally making a false or misleading statement.

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.

Social Services Law § 366-b, Penalties for Fraudulent Practices

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 misdemeanor.

Any person who, with intent to defraud, presents for payment any 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 misdemeanor.

Penal Law Article 155, Larceny

The crime of larceny is committed by 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. Larceny has been charged in some Medicaid fraud cases.

Penal Law Article 175, False Written Statements.

This law establishes criminal penalties for falsifying business records and offering false instruments to a government agency.

Penal Law Article 176, Insurance Fraud,

This law establishes criminal penalties for insurance fraud, including false claims to Medicaid and other health insurers.

Penal Law Article 177, Health Care Fraud,

This law establishes criminal penalties for fraudulent claims for health insurance payment, including Medicaid.

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.

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. 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)

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New York Labor Law §740

An employer may not take any retaliatory action against an employee if the employee discloses 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 the employer is in violation of a law that creates a substantial and specific danger to the public health and safety or which constitutes health care fraud under Penal Law § 177 (knowingly filing, with intent to defraud, a claim for payment that intentionally has false information or omissions). The employee's disclosure is protected only if the employee first brought up the matter with a supervisor and gave the employer a reasonable opportunity to correct the alleged violation. If an employer takes a retaliatory action against the employee, the employee may sue in state court for reinstatement to the same, or an equivalent position, any lost back wages and benefits and attorneys' fees. If the employer is a health provider and the court finds that the employer's retaliatory action was in bad faith, it may impose a civil penalty of \$10,000 on the employer.

New York Labor Law §741

A health care employer may not take any retaliatory 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 gave 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. If an employer takes a retaliatory action against the employee, the employee may sue in state court for reinstatement to the same, or an equivalent position, any lost back wages and benefits and attorneys' fees. If the employer is a health provider and the court finds that the employer's retaliatory action was in bad faith, it may impose a civil penalty of \$10,000 on the employer.