Metropolitan Jewish Health System and its Participating Agencies and Programs (MJHS) and Elderplan (EP)

POLICY PURSUANT TO THE FEDERAL DEFICIT REDUCTION ACT OF 2005:

Detection and Prevention of Fraud, Waste, and Abuse and Applicable Federal and State Laws

SUMMARY

Metropolitan Jewish Health System and its Participating Agencies and Programs (MJHS) and Elderplan (EP) ("MJHS/EP") is committed to complying with the requirements of Section 6032 of the Federal Deficit Reduction Act of 2005 and to preventing and detecting any fraud, waste, or abuse in its organization. To this end, MJHS/EP maintains an active 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. Moreover, MJHS/EP commits itself to investigate any suspicions of fraud, waste, or abuse swiftly and thoroughly and requires all employees, contractors and agents to assist in such investigations. By working together, we can uphold MJHS/EP's belief in organizational responsibility and ethical behavior, and we can ensure that our organizations are focused on patient, resident and member care above all other concerns.

In particular, MJHS/EP prohibits the knowing submission of a false claim for payment from a Federally 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, a Federal statute that allows private persons to help reduce fraud against the United States government. Please see more information about the Federal False Claims Acts below.

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

MJHS/EP POLICIES AND PROCEDURES

To assist MJHS/EP in meeting its legal and ethical obligations, any employee, contractor and agent 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, is required to take the following steps:

1. Report such information immediately to his/her supervisor or the MJHS Compliance Officer, Anne Dawson at (718) 921-7971 or to the Elderplan AVP of Regulatory Compliance, Joan Furman at (718) 759-4458 **Employees,**

contractors and agents may report such concerns in person or through the MJHS/EP compliance hotline at (855) 395-9169. Additionally, a report can be made to the MJHS/EP Hotlink at **intra.mjhs.org.**

- Any employee, contractor and agent of MJHS/EP who reports such information will have the right and opportunity to do so anonymously.

- In addition, the employee, contractor and agent, contractor and agent will be protected against retaliation for coming forward with such information both under the MJHS/EP internal compliance policies and procedures and Federal and State law.

- However, MJHS/EP retains the right to take appropriate action against an employee, contractor and agent who has participated in a violation of Federal or State law or hospital policy.

2. If an employee, contractor and agent believes that MJHS/EP is not responding to his or her report within a reasonable period of time, the employee, contractor and agent should bring these concerns about the MJHS/EP perceived inaction to the MJHS Compliance Officer or to the Elder plan AVP of Regulatory Compliance.

3. Employee, contractors and agents should remember that failure to report and disclose or assist in an investigation of fraud and abuse is a breach of the employee, contractor and agent's obligations to MJHS/EP and may result in disciplinary action.

4. After an employee, contractor and agent report has been filed, MJHS/EP will take actions that include the following: (but not limited to)

    a. Document review
    b. Interviewing of appropriate staff/individuals
    c. Policy/procedures review/research
    d. Collaboration with internal oversight authority (e.g. Legal Affairs EVP (or designee), President/CEO, Board, COO, etc.)
    e. Contracting with external authority
    f. Collaborate with necessary individuals to resolve issue and develop/implement remediation plan/corrective action
    g. Provide feedback to source regarding investigation without revealing confidential information
    h. Maintains all necessary documentation for compliance file/log
    i. Provides necessary communications to appropriate MJHS/EP authorities (see "d")

In addition to steps taken in response to employee, contractor and agent reports, MJHS/EP commits to the following regular actions to identify and prevent fraud, waste, and abuse in our organizations:

- Staff education/training
- Risk assessment/identification for high risk areas
- Compliance Committee members' concerns
- Auditing (completed via Compliance departments, Compliance Committees, Quality Improvement department, external auditors, etc.)
- Monitoring of vendor/provider contracts/relationships
- Review of industry trends/regulations/documents
- "Open door" policy of Compliance departments

The MJHS/EP complete compliance and audit policies and procedures are set forth in detail in the compliance plans, which are available and discussed at "new employee orientation," and reviewed via required employee, contractor and agent education. **The MJHS/EP Intranet can also be accessed at http://intra.mjhs.org/.**

EMPLOYEE, CONTRACTOR AND AGENT EDUCATION ON STATE AND FEDERAL LAWS

In furtherance of our compliance policy and to comply with the Deficit Reduction Act, MJHS/EP provides the following information about its policies and certain relevant Federal and State laws. Please note that guidance regarding the requirements of Section 6032 of the Deficit Reduction Act continues to evolve. This policy is intended to comply with the requirements of the Deficit Reduction Act and will be modified as necessary to do so in the future.

FEDERAL AND STATE STATUTES

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

Federal False Claims Act

The Federal False Claims Act, 31 U.S.C. §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 results in a civil penalty ranging from $10,781.00--$21, 563.00for each false claim submitted (those penalties are in addition to a possible award of treble damages and attorneys' fees). 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 between 10% to 30% 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. At the same time, however, any person who brings a clearly frivolous case can be held liable for the defendant's attorney's fees and costs.

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 $10,781.00 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.

New York State Laws[1]

The **New York State False Claims Act** (NY SFCA, State Finance Law §§187-194) closely tracts the Federal False Claims Act. It provides, in pertinent part, that:

> Any person who:
>
> a. Knowingly presents, or causes to be presented, to any employee, contractor, officer or agent of the State or a local government a false or fraudulent claim for payment or approval;
> b. 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;
> c. Conspires to defraud the State or a local government by getting a false or fraudulent claim allowed or paid; or
> d. 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 (1) to the State of New York for a civil penalty of not less than six thousand dollars and not more than twelve thousand dollars, plus three times the amount of damages that the State sustains because of the act of that person; and (2) to any local government for three times the amount of damages sustained by such local government because of the act of that person.
>
> For purposes of this section, the terms "knowing" and "knowingly" mean that with respect to a claim, or information relating to a claim, a person
>
> a. Has actual knowledge of such claim or information;

[1] Description of the New York State laws are based on materials created by the New York State Office of the Medicaid Inspector General, July 2007: (<http:/www.omig.state.ny.us/data/content/view/81/65/>)

b. Acts in deliberate ignorance of the truth or falsity of such claim or information; or
c. Acts in reckless disregard of the truth or falsity of such a claim or information.

Proof of specific intent to defraud is not required, but this law does not cover acts occurring by mistake or due to mere negligence.

Under the NY SFCA, a "claim" means any request or demand for money or property that is made to any employee, contractor officer or agent of the State or a local government. This includes requests or demands submitted to a contractor of the government and includes Medicaid claims, among other items.

The NY SFCA provides protection to an employee, contractor and agent 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, contractor and agent in furtherance of an action under the NY SFCA. 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-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 Service district or State may recover three times the damages (or $5,000, whichever is greater) sustained by the government due to the violation.

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 $7500 per item or service.

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 person's and the person's family's needs are not taken into account for 6 months if it is a first offense, 12 months if a second (or once if benefits received are over $3,900) and five years for 4 or more offenses.

In addition, under **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 §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 State Penal Law Article 155, Larceny applies to a person who, with intent to deprive another of 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.

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.

Further, **New York Penal Law Article 175 criminalizes 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 the175.05 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.

New York law also affords protections to employees, contractors and agent who may notice and report inappropriate activities. Under **New York Labor Law §740**, an employer shall not take any retaliatory personnel action against an employee, contractor and agent because the employee, contractor and agent:

- 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, contractor and agent 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, contractors and agents 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, contractors and agents who bring an action without basis in law or fact may be held liable to the employer for its attorney's fees and costs.

Under **New York Labor Law 741**, a health care employer may not take any retaliatory action against an employee, contractor and agent if the employee, contractor and agent 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, contractor and agent believes constitute improper quality of patient care. The employee, contractor and agent disclosure is protected only if the employee, contractor and agent 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 a patient, and the employee, contractor and agent 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, contractor and agent, the employee, contractor and agent 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.

More information on any of these or related statutes can be made available through the MJHS Compliance Office (718) 921-7971, the Elderplan AVP Regulatory Compliance Office (718) 759-4458 or the MJHS Legal Affairs EVP General Counsel's Office at (718) 491-7169. Please call if you have any questions.