

NOTICE, DETECTION AND PREVENTION OF FRAUD, WASTE AND ABUSE

The Brooklyn Hospital Center is committed to preventing and detecting fraud, waste, or abuse. To the extent possible, the Center maintains a system of internal controls designed to prevent and detect fraud, waste, or abuse, including the implementation of a compliance program.

In addition, 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 to 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

Employees are encouraged to report problems or concerns to their supervisor. If an employee believes that his/her supervisor is not taking appropriate action against an employee who has participated in a violation of Federal or State law or internal policy, the employee may report the matter to the Compliance Officer or to the Compliance Helpline.

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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 a condition of employment, TBHC expects itself to investigate any suspicion of fraud, waste, or abuse swiftly and thoroughly and requires all employees to assist in such investigations. Employees are required to report and disclose or assist in an investigation of fraud and waste to the Compliance Officer. Failure to do so 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

- 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 obtain payment or transmission of property from 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 medical and Medicare claims.

In addition, the OIGCA states that a person who is liable for a violation of the False Claims Act is liable for three times the amount of the damages sustained by the Government because of the violation. In addition, the OIGCA states that a person who is liable for a violation of the False Claims Act is liable for the reasonable attorneys' fees and costs incurred by the Government in bringing the action.

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, is entitled to a percentage of the amount of the claim if the government does not decide to bring the lawsuit, or if the relator brings the lawsuit on his or her own behalf.

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 a complaint in good faith. However, any person who brings a clearly frivolous case can be held liable for the attorney's attorney's fees and costs.

reporting mechanisms described in this policy that employees may use to report such concerns.

Federal Program Fraud Civil Remedies Act of 1986

The Federal Program Fraud Civil Remedies Act of 1986, 31 U.S.C. §§ 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 with knowledge 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

Otherwise, there is no necessary proof of specific intent to defraud the government. Assessment of 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 employer, contractor, or subcontractor of a governmental entity a false or fraudulent claim, or causes to be made or used a false report or statement to get a false or fraudulent claim paid or approved by the State or a local government, or causes to be made or used a false report or statement to get a false or fraudulent claim allowed or approved by the State or a local government, or causes to be made or used a false report or statement to get a false or fraudulent claim paid or approved by the State or a local government, or causes to be made or used a false report or statement to get a false or fraudulent claim paid or approved by 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 provides protection to an employer of any private or public employer when it is discharged, demoted, suspended, threatened, or taken by the employee in furtherance of an action under the NYSL § 187. 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 knowingly or deliberately conceals material information in a claim for public assistance, or knowingly makes a false statement or representation, or to temporarily 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 section, a civil penalty of not less than \$5,000 and not more than \$10,000, plus three times the amount of damages that the State sustains because of the act of that person, is liable to the State of New York for a civil penalty of not less than \$5,000 and not more than \$10,000, plus three times the amount of damages that the State sustains because of the act of that person. 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 by intentionally concealing material information, or by intentionally engaging 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 section, a civil penalty of not less than \$5,000 and not more than \$10,000, plus three times the amount of damages that the State sustains because of the act of that person, is liable to the State of New York for a civil penalty of not less than \$5,000 and not more than \$10,000, plus three times the amount of damages that the State sustains because of the act of that person. 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 care, services or supplies were not provided as claimed;
- the person who ordered or prescribed the item was not a licensed practitioner. As evidence has been presented of

the services or supplies were not in fact provided

The penalty shall not exceed \$2,000 for each item or service. If the penalty for a violation of this section exceeds \$2,000, the penalty shall not exceed \$7,500 per item or service.

Under New York Social Services Law §266-b(9), any person who, with intent to defraud, presents for allowance or payment any false or 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 act constitutes a violation of a provision of the penal law of the state of New York, the person committing the

obtains, takes or withholds the property by means of trick, embezzlement, false pretense, false promise, including a scheme to defraud,

New York Labor 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.

are involved.

New York law also affords protections to employees who may notice and report inappropriate activities. Under New York Labor Law

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 human rights abuse;
- 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 violation. 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.