



ALL ABOUT KIDS
Evaluations & Therapy Services

ALL ABOUT KIDS
CORPORATE COMPLIANCE PROGRAM
POLICY & PROCEDURES

Revised 12/08/2015

ALL ABOUT KIDS
CORPORATE COMPLIANCE PROGRAM

Corporate Compliance Plan Overview

All About Kids established a Corporate Compliance Plan (“The Plan”) which promotes an organizational culture that encourages ethical conduct and a commitment to compliance with laws, rules and regulations which govern our operations. The Plan encompasses all of the following requirements with an emphasis on ethics, integrity and open lines of communication. The Plan has been incorporated into our operation which is committed to high standards of performance and quality of services.

The Plan, at a minimum, is applicable to billings to and payments from the Early Intervention and School Programs. In order to be in compliance with additional federal and state requirements, we have adopted the following requirements for compliance plans beyond the basic statutory requirements which are as follows:

- Written policies and procedures that describe compliance expectations as embodied in a code of conduct or code of ethics, implementation of the operations of the compliance program, provision of guidance to employees and others on dealing with potential compliance issues, identification of how to communicate compliance issues to appropriate compliance personnel and describe how potential compliance problems are investigated and resolved
- Designation of an employee vested with responsibility for the day-to-day operation of the compliance program
- Training and education of all affected employees and individuals
- Development of communication lines to the responsible compliance position that are accessible to all employees and affected persons associated with our agency
- Development of disciplinary policies to encourage good faith participation in the compliance program by all affected individuals, including policies that articulate expectations for reporting compliance issues and assist in their resolution and outline sanctions for:
 - Failing to report suspected problems;
 - Participating in non-compliant behavior; or
 - Encouraging, directing, facilitating or permitting non-compliant behavior; such disciplinary policies shall be fairly and firmly enforced.
- Establishment of a system for routine identification of compliance risk areas
- Establishment of a system for responding to compliance issues as they are raised; for investigating potential compliance problems; responding to compliance problems as identified in the course of self-evaluations and audits; correcting such

problems promptly and thoroughly and implementing procedures, policies and systems as necessary to reduce the potential for recurrence; identifying and reporting compliance issues to the OMIG or the DOH; and refunding overpayments.

- A policy of non-intimidation and non-retaliations for good faith participation in the compliance program, including but not limited to reporting potential issues, investigating issues, self-evaluations, audits and remedial actions, and reporting to appropriate officials as provided in sections seven hundred forty and seven hundred forty-one of the labor law (new whistleblower provisions for health care fraud).

Implementation Plan

The Plan is effective immediately. All employees, offices, directors, and agents of All About kids are provided a copy of this Plan and shall execute an acknowledgement. At this time they shall be expected to comply with the terms of the Plan. All employees, officers, directors and agents shall be instructed to direct any questions or concerns about the Plan to the Compliance Officer.

A printed policy will be available in the office of the Assistant Director in each All About Kids' location, as well as in the office of the Compliance Officer. An electronic version of the policy is available on the All About Kids website.

Code of Conduct and Ethics

We are committed to conducting business ethically and in conformance with all applicable laws, regulations, and standards. This policy applies to all employees, including the Executive Directors, financial officers and agents of All About Kids. It is our commitment to maintain a written Code to provide guidance on organizational responsibilities related to compliance with all applicable laws and regulations. We have developed a written Code to provide all employees, officers, directors and agents of All About Kids with guidance on expectations for workplace conduct.

1. All employees, officers, directors and agents of All About Kids are expected to be truthful at all times in conducting the affairs of All About Kids. This will include, but not be limited to, truthfulness in processing internal and external copy and electronic documents and oral and written communications on behalf of All About Kids. Honest and ethical conduct also includes the ethical handling of actual or apparent conflicts of interest between personal and professional relationships.
2. All employees, officers, directors and agents of All About Kids are expected to conduct business in compliance with applicable governmental laws, rules and regulations.
3. All employees, officers, directors and agents of All About Kids are expected to promptly report of violations of the Code of Ethics to an appropriate person or persons identified in the Plan.
4. All employees, officers, directors and agents of All About Kids are expected to engage in good faith participation in the compliance program. We have developed sanctions that will apply for failing to report suspected problems, participating in non-compliant behavior and encouraging, directing or facilitating or permitting non-compliant behavior.

Duty to Report/Hotline Policy

We recognize that a critical aspect of our Plan is the establishment of a culture that promotes prevention, detection and resolution of instances of conduct that do not conform to federal and state and private payer requirements, as well as the organization's ethical and business policies. To promote this culture, we have established a policy that permits all employees, officers, directors and agents to report in a confidential/anonymous manner by calling the hotline on all problems, concerns, and potential violations of federal, state and local laws and regulations.

1. All employees, officers, directors and agents are responsible for reporting misconduct, including actual or potential violations of law, regulation, Code, problems and concerns regarding questionable accounting, internal accounting controls, or auditing matters.

2. We have established a telephone hotline to receive complaints and concerns and relay them directly to a designated representative of the Executive Director without the caller having to go through management channels. Reporting can be done directly to the hotline 24 hours a day, 365 days a year. The following number has been established as the telephone hotline (516) 576-2040 x 56.
3. The designated Compliance Officer is Jules Taylor, Jr., Human Resources Manager, who can be reached at (516) 576-2040 x 56.
4. Employees, officers, directors and agents are not obligated to use the hotline as their only means of reporting complaints and concerns. They are welcome to utilize their immediate Supervisors, Managers, and Executive Directors if they choose. The Management staff will then relay the complaint and/or concern to the Compliance Officer.
5. Anyone with knowledge of a potential violation of law, regulation, Code of Conduct, policies or procedures has an affirmative duty to report that information. Failure to report a potential violation may result in appropriate disciplinary action consistent with current disciplinary procedures.
6. All employees, officers, directors and agents who report problems and concerns via the hotline in good faith will be protected from any form of retaliation or retribution. (Non-retaliation/Non-retribution Policy)
7. Callers shall be assured of their rights to anonymity or, if they identify themselves, confidentiality within the limits allowed by law.
8. All employees, officers, directors and agents cannot exempt themselves from the consequences of their own misconduct by reporting the issue, although self-reporting may be taken into account in determining the appropriate course of action.

Conflict of Interest Policy

All employees, officers, directors and agents who work for our organization, including auditors, accountants, and consultants retained by us, have an obligation to conduct business within guidelines that prohibit actual or potential conflicts of interest. This policy is established to ensure that child care and business activities are conducted in an objective manner and are not motivated by the desire for personal or financial gain.

1. Employees and those acting on behalf of us are required to disclose any actual or potential conflicts of interest and seek guidance on how to handle such situations.

Conflict of Interest: Any situation in which financial or other personal considerations may compromise or appear to compromise: (1) the business judgment of any employee or other party engaged by us; (2) the delivery of service; or, (3) the ability of an employee to do his or her job. An actual or potential conflict of interest occurs when an individual is

in a position to influence a decision that may result in a personal gain for that person at the expense of our best interest or of our stakeholders.

Confidentiality Policy

This confidentiality of information is of the utmost importance to the organization. Accordingly, all employees, directors, officers and agents of All About Kids are responsible for ensuring the confidentiality of all personal identifiable information in all early intervention/school records, as defined above, consistent with the provision of FERPA and other applicable provisions of law governing the confidentiality of records.

Non-Retribution/Non-Retaliation Policy

We are committed to the establishment of a culture that promotes prevention, detection and resolution of instances of conduct that do not conform to federal and state laws and regulations, as well as the Code of Conduct and Ethics. In furtherance of this we established a problem resolution process and a strict non-retaliation policy to protect employees who report problems and concerns from retaliation. Any form of retaliation can undermine the problem resolution process and result in a failure of communication channels in the organization. This policy has been developed to underscore these principles.

1. It is our policy to prohibit the firing, threatening or otherwise harming of any person on the basis of the employee's reporting a problem or his or her participation in an investigation of violations of rules or corporate responsibility laws.
2. People who report problems and concerns regarding questionable accounting, internal accounting controls, or auditing to the hotline established by the Executive Director may do so without fear of retaliation or retribution.
3. People who bring organizational problems or criminal conduct to their supervisors, others in management, or federal authorities are entitled to protections and remedies.

This policy is consistent with the provisions of sections 740 and 741 of New York State Labor Law. An employee, officer, director or agent of All About Kids who has been the subject of a retaliatory personnel action may initiate such legal actions and proceedings and request such relief to the extent provided in sections 740 and 741 of the New York State Labor Law.

Auditing and Monitoring Policy

This policy focuses on the ongoing auditing and monitoring of accounting controls, systems and procedures. Management will review and certify internal accounting controls are in place and sufficient to gather the information needed to evaluate and

reflect in the financial statements. A sound system of internal controls is required to enable reliance upon financial systems.

Given the nature of our business, we have identified the following compliance risk areas which we currently monitor and perform internal audits:

- Billing and Payments
- Quality of services
- Governance
- Mandatory reporting
- Credentialing; and
- Other risk areas that may be identified

We shall conduct internal audits to effectively identify non-compliance according to an audit plan which is:

- Developed at least annually, and revised as necessary
- Assesses compliance data from the previous year (audits, statistics, etc.), to identify high risk areas for the coming year (trend tracking)
- Identifies corrective action plan that requires auditing to confirm compliance; and
- Includes measurements, timetables and individuals responsible for addressing each risk area

Such internal audits consists of reviewing session notes/logs after many Quality Assurance checks beginning with the Operational Staff and ending with the Finance Department. The internal audit is performed in the Finance Department and entails the verification of all credentials, logs, bills, session notes, invoices, etc., before submission of payment. The Internal Auditor reviews all documentation for perfection. If an error is found and/or information is missing, the paperwork is sent back to the appropriate Biller before any submission of payment is made. The Biller is required to contact the Therapist/Teacher to make all corrections before sending it back to the Internal Auditor for re-verification of accurateness. Once the Internal Auditor confirms the changes, the Biller will then submit the information for payment.

Such audit findings shall be analyzed to identify non-compliance and identification of trends and other appropriate metrics identified in advance of internal and external audits. If billing errors or billing violations are discovered, All About Kids will take the necessary steps to ensure similar violations do not occur in the future.

Whether billing is conducted either electronically or manually, an overpayment will be detected when reconciliation is done after submission and at the time of receipt of payment. If an overpayment is discovered, All About Kids will take the proper steps of investigating and reimbursing said funds.

Legality

All About Kids is committed to conducting all of its affairs in accordance with applicable federal and state laws and regulations.

Excluded Providers

All About Kids is dedicated to making a difference in the lives of children and families who need our help by using the most qualified and experienced professionals in the industry. All employees, officers, directors, agents and Independent Contractors will be checked monthly, at a minimum, against the following lists:

- The General Services Administration's Federal Excluded Party List System
- The United States Department of Health and Human Service's Office of the Inspector General's Lists of Excluded Individuals and Entities
- The New York State Department of Health's Office of the Medicaid Inspector General's list of Restricted, Terminated, or Excluded Individuals or Entities

All About Kids will comply with all laws, rules, and regulations mandated by the State of New York, or any county in New York State, that may require an added check against an additional List System (or additional List Systems). It is the policy of All About Kids to immediately implement a new list, or listings, into the monthly Excluded Providers Check policy as it becomes known to All About Kids.

Any employees, officers, directors, agents, or Independent Contractors that is identified as a Restricted, Terminated or Excluded Individual or Entity within their scope of employment/contract will immediately be taken off cases, if applicable, and be reported to the appropriate School District, County, Government Agency, OMIG, etc. within three (3) days of its discovery.

All new employees, officers, directors, agents and Independent Contractors will be checked against all lists stated above prior to their date of hire/commencement. If any interested party is considered a Restricted, Terminated, or Excluded Individual or Entity, All About Kids will not begin a contract with that individual/party.

Training and Education

The effectiveness of the Plan will be enhanced by the provision of training to all employees and affected individuals to assure accurate, reliable and consistent information which will lead to improved compliance.

All employees, officers, directors and agents of All About Kids will receive training on policies and procedures and specifically, the Plan, as well as the expectations with respect to compliance with the Plan, at the time of hire or at such other time as such individual commences activities on behalf of or for the benefit of All About Kids.

Training provided in furtherance of the Plan shall be provided by qualified individuals and will contain the following components:

- Training shall be mandatory and carry sanctions for failure to attend
- Training materials shall be annually evaluated, consider relevant audits and investigations, include a variety of teaching methods
- Training information shall be distributed through several means, including but not limited to, notices, posters, and intranet sites and may occur at regular staff meetings
- Training and education will be centered on changes in applicable laws, regulations and policies
- Training will address identified or potential weaknesses in current operations, including the development and implementation of corrective action plans when necessary
- Training will explain the importance of complying with applicable laws, rules, and regulations
- Training shall include legal requirements relating to the False Claim Act and related laws
- Training shall include review of disciplinary policies which encourage good faith participation in compliance program



ALL ABOUT KIDS Evaluations & Therapy Services

Acknowledgement of Receipt of Compliance Plan for All About Kids

I, _____, acknowledge that I have received, read, and understand the Compliance Plan for All About Kids (the “Plan”) and that I will abide by its terms. I understand that I may address any questions or concerns regarding the Plan to Jules Taylor, Jr., Compliance Officer. I am aware of the anonymous hotline which I may use to make an anonymous report of a suspected or actual violation of law, regulation of the Plan.

Signature _____

Name _____

Title _____

Date _____

APPENDICES

The following laws has been developed to prevent fraud and abuse within the industry to ensure quality of care. This body of law includes, but is not limited to:

<p style="text-align: center;">FEDERAL AND STATE LAWS RELATING TO FILING FALSE CLAIMS</p>
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(Source: OMIG website <http://www.omig.state.ny.us/data/content/view/81/206>)

(31 U.S.C. §3729-3733)

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:

(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 (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 \$5,000 and not more than \$10,000, plus 3 times the amount of damages which the

Government sustains because of the act of that person

(b) 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. 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 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 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) is 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 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 \$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 NY False Claims Act closely tracks 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 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 of 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 \$2,000 per violation. If repeat violations occur within 5 years, a penalty up to \$7,500 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 person's, the person's family's needs are not taken into account for 6 months if a first offense, 12 months if a second (or once if benefits received are over \$3,900) and live years for 4 or more offenses.

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.

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

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.

**UNDERSTANDING FEDERAL AND STATE LAWS
GOVERNING FALSE CLAIMS**

THE FEDERAL FALSE CLAIMS ACT
(31 .U.S.C. §3729-3733)

The federal False Claims Act (FCA), dating back to the Civil War, is designed to encourage individuals to come forward with their private attorneys to uncover fraud and prosecute such offenses on behalf of the federal government by rewarding “whistleblowers” with a percentage of the recovery.

Such a “qui tam” lawsuit allows private citizens to sue for themselves, as well as on behalf of the federal government against which the fraud has been perpetrated. The Act has been revitalized to ferret out general waste and misuse of federal dollars, especially in the Medicare program.

Under the FCA, a person may bring an action in the name of the federal government against any individual who, in part,:

- ✓ knowingly presents, or causes to be presented, to a representative or employee of the federal government, a false or fraudulent claim for payment or approval; or
- ✓ knowingly makes or uses, or causes to be made or used, a false record or fraudulent claim paid or approved by the federal government; or
- ✓ conspires to do the same; or
- ✓ has possession or control of property or money used by the federal government and, intending to defraud the government, willfully conceals or causes to be delivered less property than the amount received for such property;
- ✓ knowingly makes or uses or causes to be made or used, any false record or statement to conceal, avoid or decrease an obligation to the federal government.

A person has acted “knowingly” under the FCA when such person:

- ✓ 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.

Specific intent to defraud is not, therefore, a necessary requirement.

While providing a fiscal incentive to “disclose”, the “FCA” also affords “whistleblowers” a variety of protections against intimidation or retaliation. Any employee who is discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against in the terms and conditions of employment as a result of the employee’s fraudulent acts or the employee’s participation in the proceedings is entitled to the appropriate relief which may include reinstatement, special damages, and twice back pay, with interest.

NEW YORK STATE FALSE CLAIMS ACT (NYSFCA)
(New York State Finance Law, Article 13)

Several states, including New York, Massachusetts, New Hampshire and Rhode Island, as well as municipalities such as New York City, have their own versions of the Federal False Claims Act with its “private recovery” or “qui tam “ provisions.

The provisions of the NYSFCA are closely aligned with the federal FCA provisions including the definition of “knowing and knowingly” and the list of violative conduct and offenses. The state FCA, however, extends to offenses against local governments including any county, city, town, village, school district, BOCES, local public benefit corporation or other municipal corporation or political subdivision of the State, as well.

Either the state’s attorney general may bring a civil action on behalf of the people of the State of New York or local government under the state FCA, or, as under the federal FCA, any person may bring a “qui tam” civil action in his/her own right and receive a percentage of the recovery, accordingly.

NEW YORK CITY FALSE CLAIMS ACT
Local Law No. 53 (2005)

New York City has created its own civil penalties and private right of action for false or fraudulent claims, modeled on the federal False Claim Act.

STATE SOCIAL SERVICES LAWS COVERING FALSE STATEMENTS OR PRACTICES
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An essential element of New York State's laws providing "assistance, care and services" are a series of complementary provisions designed to prevent fraud and abuse in the receipt of such public assistance or care.

The state's Social Services Laws govern public assistance and provide both general and specific penalties for the making of false statements or representations, or concealing of information. Social Services Law, §145, criminalizes such activities, making them misdemeanors.

Some provisions, such as Social Services Law, §145-b, not only criminalize the conduct, but authorize the recovery of civil damages against the violator equal to three times the amount by which any figure is falsely overstated, or times damages available. Demands for repayments or refunds back to the state or federal government relative to the federal Medicaid program (Title XIX of the Federal Social Security Act, 42 U.S.C.A. §1396 et seq) shall also bear interest. Section 145-b also authorizes the State Department of Health to impose monetary penalties as restitution to the Medical assistance program (Medicaid) upon any person who:

- ✓ fails to comply with Medicaid requirements; or
- ✓ generally accepted medical practice on a substantial number of cases; or
- ✓ grossly and flagrantly violates such standards and receives, or causes to be received by another person, Medicaid payments

Each of these provisions is in addition to the wealth of crimes and misdemeanors around false documentation and theft, in general, found in the state's Penal Laws.