Staten Island Performing Provider System, LLC

Compliance Policy 514

Subject:	Detecting and Preventing Fraud, Waste and Abuse and Misconduct
Endorsed By:	Compliance Committee
Approved By:	Compliance Committee, Board of Managers
DSRIP Implementation Deadline:	
Effective Date:	June 2017
Supersedes:	October 2015
Purpose:	It is the obligation of SI-PPS to prevent and detect any actions within the organization that are illegal, violate of federal and state health care programs, fraudulent or in violation of any applicable SI-PPS policy. This policy provides guidance regarding SI-PPS policies, the requirements, rights, and remedies of federal and state laws governing the submission of false claims, including the rights of PPS Associates to be protected as whistleblowers under such laws and the importance of submitting accurate claims and reports to federal and state government.
Policy:	SI-PPS prohibits the violation of federal and state law, applicable SI-PPS policy and knowingly submitting a false claim for payment in relation to a federal or state-funded health care program. Such submission violates the federal False Claims Act, as well as various state laws, and may result in significant civil and/or criminal penalties. Any individual who in good faith reports any action or suspected action taken by or within the organization in violation of these laws or that is otherwise illegal, fraudulent or in violation of any applicable policy of SI-PPS shall not suffer intimidation, harassment, discrimination or other retaliation or, adverse consequences related to employment or contractual relationship with SI-PPS.

Procedure:	A. SI-PPS Fraud and Abuse Detection, Prevention and Protection To assist SI-PPS in meeting its legal and ethical obligations, SI-PPS expects and encourages any PPS Associate who is aware of or reasonably suspects 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, to report such information to his/her supervisor, the Compliance Officer or call the confidential Compliance Help-Line at (855-233-3138) which is available 24 hours a day, 7 days a week or by visiting www.statenislandperformingprovidersystem.ethicspoint.com where individuals can make reports about compliance issues online. Where appropriate, the SI-PPS Compliance Officer will report the issue to the Governing Body or designated Committee. Any individual who reports such information will have the right and opportunity to do so anonymously and will be protected against intimidation, harassment, discrimination or other retaliation or, in the case of an employee, adverse employment consequences. SI PPS also prohibits anyone from intimidating and individual from disclosing compliance concerns. A good faith report is a report that a whistleblower reasonably believes to be true regarding conduct that he or she reasonably believes to constitute illegal conduct, fraud, or a violation of SI PPS policy. SI-PPS will immediately investigate and take appropriate action with respect to all suspected acts of retaliation or intimidation. Reports will be kept confidential to the extent permitted by law. SI-PPS obligates itself to swiftly and thoroughly investigate any reasonable, credible report of fraud, waste, abuse or misconduct or any reasonable suspicion thereof through SI-PPS' Compliance Program. SI-PPS has the right to take appropriate action against a PPS Associate who has participated in a violation of law or SI-PPS policy. The failure to comply with the laws and/or to report suspected violations of state or federal law can have very serious consequences for SI-PPS and for any affiliated individual who fails to comply or report. As a PPS Associate, you have an obligation to report

concerns using the internal methods listed above and to understand the options available should your concerns not be resolved.

SI-PPS educates its Board members, officer, employees, contractors, and agents on the importance of this policy on a periodic basis through written or oral communications and by distributing a copy of this policy via SI-PPS' public website.

Any person who is the subject of a whistleblower complaint may not be present at or participate in SI PPS Board of Managers or its committee deliberations or voting on the matter relating to the complaint. Although the SI PPS Board of Managers or its committee can request that person present background information or answer questions prior to the commencement of deliberations or voting.

Any employee who also holds a position on the SI PPS Board of Managers shall not take part in any deliberations concerning the administration of this policy.

B. State and Federal Fraud and Abuse Detection, Prevention and Employee Protection

I. FEDERAL LAWS

False Claims Act (31 U.S.C. §§ 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 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 (4) 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 $11,000, plus 3 times the amount of damages which the Government sustains because of the act of that person…

> (a) 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.

While the FCA 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.

In sum, the FCA imposes liability on any person who submits a claim to the federal government that he or she knows is false. An example may be a physician who submits a bill to Medicare for medical services she knows she has not provided. The FCA 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 are 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 the false statements or records in order to retain the money. An example of this so-called “reverse false claim” may include 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.

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 not be less than 25 percent and not more than 30 percent.

Federal Program Fraud Civil Remedies Act (31 U.S.C. §§ 3801-3812)

Under the Federal Program Fraud Civil Remedies Act, any person who makes, presents, or submits (or causes to be made, presented, or submitted) a claim that the person knows, or has reason to know (i) is false, fictitious, or fraudulent; (ii) includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent, or omits material facts (which the person has a duty to include) and the statement is false, fictitious, or fraudulent as a result of such omission; or (iii) is for payment for the provision of property or services which the person has not provided as claimed may be subject to, in addition to any other remedy, a civil penalty of not more than $8500 for each claim or statement. The violator may also be subject to an assessment of two (2) times the amount of such claim.
An additional penalty of up to $8500 may be imposed on any person who makes, presents, or submits (or causes to be made, presented, or submitted) a written statement that (i) the person knows, or has reason to know (a) asserts a material fact which is false, fictitious, or fraudulent, or (b) omits a material fact (which the person has a duty to include) and the statement is false, fictitious, or fraudulent as a result of such omission; and (ii) contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement.

Civil Monetary Penalties Law (42 U.S.C. §1320-7a

The Civil Monetary Penalties law authorizes the imposition of substantial civil money penalties against any person, including an organization, agency, or other entity, that engages in activities including, but not limited to: (i) knowingly

presenting or causing to be presented, a claim for services not provided as claimed or which is otherwise false or fraudulent in any way; (ii) knowingly giving or causing to be given false or misleading information reasonably expected to influence the decision to discharge a patient; (iii) offering or giving remuneration to any beneficiary of a federal health care program likely to influence the receipt of reimbursable items or services; (iv) arranging for reimbursable services with an entity which is excluded from participation from a federal health care program; (v) knowingly or willfully soliciting or receiving remuneration for a referral of a federal health care program beneficiary; or (vi) using a payment intended for a federal health care program beneficiary for another use. Penalties depend on specific conduct involved, and the Office of the Inspector General may seek different amounts and assessments based on the type of violation at issue.

II. NEW YORK STATE LAWS

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

The New York False Claims Act closely tracks the Federal FCA. 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 or 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 of up to $7,500 per violation may be imposed for 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, and is found to have intentionally made a false or misleading statement for the purpose of establishing or maintaining the eligibility of the individual or of the individual's family for aid or of increasing (or preventing a reduction in) the amount of such aid, then the needs of such individual shall not be taken into account in determining his or her need or that of his or her family (i) for a period of six months upon the first occasion of any such offense, (ii) for a period of twelve months upon the second occasion of any such offense or upon an offense which resulted in the wrongful receipt of benefits in an amount of between at least one thousand dollars and no more than three thousand nine hundred dollars, (iii) for a period of eighteen months upon the third occasion of any such offense or upon an offense which results in the wrongful receipt of benefits in an amount in excess of three thousand nine hundred dollars, and (iv) five years for any subsequent occasion of any such offense.

CRIMINAL LAWS

False Statements Relating to Health Care Matters (18 U.S.C. § 1035)

Any person, in any manner involving a health care benefit program, who knowingly and willfully (i) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (ii) makes any materially false, fictitious, or fraudulent statements or representations, or makes or uses any materially false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry, in connection with the delivery of or payment for health care benefits, items, or services, shall be fined or imprisoned not more than 5 years, or both.

Health Care Fraud (18 U.S.C. § 1347)

Any person who knowingly and willfully executes, or attempts to execute, a scheme or artifice (i) to defraud any health care benefit program; or (ii) to obtain by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any health benefit program, in connection with the delivery of or payment for health care benefits, items, or services, shall be fined or imprisoned not more than 20 years, or both; and if the violation results in death, such person shall be fined, or imprisoned for any term of years or for life, or both.

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 a 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. This crime 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.
e. § 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

This statute applies to claims for insurance payment, including Medicaid or other health insurance, and contains six crimes.

a. Insurance fraud in the fifth degree involves intentionally filing a health insurance claim knowing that it is false. It is a Class A misdemeanor.
b. Insurance fraud in the fourth degree is filing a false insurance claim for over $1,000. It is a Class E felony.
c. Insurance fraud in the third degree is filing a false insurance claim for over $3,000. It is a Class D felony.
d. Insurance fraud in the second degree is filing a false insurance claim for over $50,000. It is a Class C felony.
e. Insurance fraud in the first 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

This statute applies to claims for health insurance payment, including Medicaid, and contains five crimes.

a. Health care fraud in the fifth 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 fourth 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 third degree is filing false claims and annually receiving over $10,000 in aggregate. It is a Class D felony.
d. Health care fraud in the second degree is filing false claims and annually receiving over $50,000 in aggregate. It is a Class C felony.
e. Health care fraud in the first 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. 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 False Claims Act (State Finance Law § 191)

The New York False Claims 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 similar agency or public official. Protected disclosures are those that assert that the employer's policy, practice or activity violates the law and 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 (a) the employee first brought up the matter with a supervisor and gave the employer a reasonable opportunity to correct the alleged violation, and (b) the policy, practice or activity actually violates the law. If an employer takes a retaliatory action against the employee, the employee may sue 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 are asserted by employees in good faith and with the reasonable belief that the policy, practice or activity constitutes 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 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.
Scope:	SI-PPS Associates (PPS Associates shall mean all individuals and entities that participate in or do business with SI-PPS, including but not limited to its employees, independent contractors, vendors, agents, suppliers, executives and governing body members).
Project(s):	
Regulatory Alignment:	False Claims Act (31 U.S.C. §§ 3729-3733), Federal Program Fraud Civil Remedies Act (31 U.S.C. §§ 3801-3812), Civil Monetary Penalties Law (42 U.S.C. §1320-7a, New York False Claims Act (State Finance Law, §§ 187-194), Social Services Law § 145-b False Statements, Social Services Law § 145-c Sanctions, False Statements Relating to Health Care Matters (18 U.S.C. § 1035), Social Services Law § 145 Penalties, Health Care Fraud (18 U.S.C. § 1347), Social Services Law § 366-b Penalties for Fraudulent Practices, Penal Law Article 155 Larceny, Penal Law Article 175 False Written Statements, Penal Law Article 176 Insurance Fraud, Penal Law Article 177 Health Care Fraud, Federal False Claims Act (31 U.S.C. § 3730(h)), New York False Claims

	Act (State Finance Law § 191), New York Labor Law § 740, New York Labor Law § 741 Non-profit Revitalization Act of 2013 (S5845/A8072/10365B)
Reference(s):	
Attachment(s):	none

Reviewed/Revised by Regina Bergren April 2016

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Approved by Compliance Committee: August 2016, May 2017

Partner Organization	Responsible Staff Name & Title	Date Reviewed	Signature