The Arc of Chemung-Schuyler
Corporate Compliance Plan

Approved by the joint Board of Directors
September 22, 2020

Note
This is the first Corporate Compliance Plan of the combined entity, The Arc of Chemung-Schuyler. It is reflective of the Arc of Chemung Compliance Plan dated May 2017 and the Arc of Schuyler Compliance Plan dated January 2019.

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I. Introduction

The Arc of Chemung-Schuyler is committed to providing high quality care to individuals and families receiving supports from the Agency. Accordingly, the Arc of Chemung-Schuyler has established a Corporate Compliance Program as outlined in this plan and is committed to conform to these standards and comply with all Federal, State and local laws and regulations.

The Corporate Compliance Plan is designed and organized by the seven elements as identified by the U.S. Department of Health and Human Services, Office Inspector General and the eight New York State Office of Medicaid Inspector General (NYS OMIG). These include: written policies and procedures, designated employee, training and education, open lines of communication, disciplinary policies to encourage participation, routine identification of risk areas and system for reporting compliance issues. The NYS OMIG defines the eighth element as policies for non-intimidation and non-retaliation.

To further these compliance goals, the Agency has established a Corporate Compliance Plan to assist in the management of the Corporate Compliance program. This Plan is designed to establish a framework for legal and ethical compliance by the Arc of Chemung-Schuyler and its representatives. It is available on the agency website: arcofchemungschuyler.org.

The following terms may be used throughout the Plan and are defined as follows:

- Agent – Any person, such as an employee, volunteer or board Member, acting on behalf of the Agency.

- Audit – An inspection of a program's or organization's accounts, typically by an independent body.

- Board member – A board member is an elected participant on the Board of Directors which manages the business and affairs of the Agency. They volunteer their time and efforts and are not paid by the Agency.

- Code of Conduct – A central guide and reference for users in support of day-to-day decision making. It is meant to clarify an organization's mission, values and principles, linking them with standards of professional conduct.

- Compliance – Adherence to the laws and regulations passed by official regulating bodies as well as general principles of ethical conduct.

- Compliance Officer (CO) – An employee whose responsibilities include ensuring that the company complies with regulatory requirements and internal procedures.

- Compliance Program (CP) – The internal programs and procedure decisions made by the agency in order to meet the standards set by government regulations and laws.

- Due diligence – Reasonable steps taken by a person in order to satisfy a legal requirement, especially in buying and selling.

- Employee – A person employed for wages or salary which is paid for by the agency. The employee may be part-time, full-time, per Diem and/or temporary/seasonal.

- Ethics – The moral principles that govern one's behaviors. The concepts of right and wrong influence our decisions, choices and actions.

- Fraud – A deception deliberately practiced in order to secure unfair or unlawful gain.

- General Waste and Abuse – Billing in ways inconsistent with sound financial management or professional standards; or payment/billing is fraudulent when done intentionally and abusive if unintentional.

- Risk Assessment – The process of identifying variables that have the potential to negatively impact an organization's ability to conduct business.

- Volunteers – A volunteer is anyone who, without compensation (other than reasonable reimbursement for expenses incurred as determined in the Volunteer Protection Act of 1997) performs services for a nonprofit organization, at the direction of and on behalf of such organization. The Arc of Chemung-Schuyler has multiple types of volunteers. In the Corporate Compliance Plan, the term volunteer refers to *Program/Long term volunteers* providing thirty or more hours of service per year.

- Waste – Waste is the unintentional misuse of resources that lead to unnecessary costs.

- Whistleblower – A person who informs on a person or organization engaged in illicit activity.

II. Written Procedures

Written procedures are designed to establish the agency expectations when it comes to Corporate Compliance. In addition, agency procedures are designed to provide guidance to employees and others on dealing with potential compliance issues, how to communicate compliance issues to appropriate compliance personnel and describe how potential corporate compliance problems are investigated and resolved. Additional, specific details and information regarding corporate compliance may be found in the Agency employee handbook and Agency procedure manuals.

The Arc of Chemung-Schuyler Corporate Compliance Program encompasses the following:

1. It has been, and continues to be, the practice of this Chapter to comply with all applicable federal, state and local laws and regulations, and payor requirements. It is also this Chapter's practice to adhere to the standards of conduct that are adopted by the Board of Directors, the Executive Director and the Corporate Compliance Committee.

2. We have always been and remain committed to our responsibility to conduct our business affairs with integrity based on sound ethical and moral standards. We will hold our employees, contracted practitioners, and vendors to these same standards.

3. All employees, contracted practitioners, and vendors shall acknowledge that it is their responsibility to report any suspected instances of suspected or known noncompliance to their immediate supervisor, the Executive Director or the Corporate Compliance Officer. Reports may be made anonymously, without fear of retaliation or retribution. Failure to report known noncompliance or making reports which are not in good faith will be grounds for disciplinary action, up to and including termination. Reports related to harassment or other workplace-oriented issues, will be referred to Human Resources.

4. The Chapter will communicate its compliance standards and procedures through required training initiatives to all agents, contracted practitioners, and selected vendors. We are committed to these efforts through distribution of this Compliance Plan, our Code of Ethics and our Code of Conduct.

5. The Chapter is committed to maintaining and measuring the effectiveness of our Compliance Program through monitoring and auditing systems reasonably designed to detect noncompliance by Chapter agents. We shall require the performance of regular, periodic compliance audits by internal and/or external auditors who have expertise in federal and state health care statutes, regulations, and federal program requirements.

6. This Compliance Plan will be consistently enforced through appropriate disciplinary mechanisms, including, if appropriate, discipline of individuals responsible for failure to detect and/or report noncompliance.

7. Detected noncompliance, through any mechanism, i.e. compliance auditing procedures, confidential reporting, will be responded to in an expedient manner. We are dedicated to the resolution of such matters and will take all reasonable steps to prevent further similar violations, including any necessary modifications to the Compliance Program.

8. The Chapter will, at all times, exercise due diligence with regard to background and professional license investigations for all prospective agents, contractors and selected vendors.

Our Code of Ethics

It is the practice of the Chapter to conduct all business in accordance with uncompromising ethical standards. We are committed to complying with all applicable laws and regulations. We believe the following core values are essential to the mission of serving our: kindness, courtesy, respect, honesty, integrity, fairness, teamwork, compassion, confidentiality, advocacy, ethics and compliance. Adherence to such standards will not be traded or compromised for financial, professional or other business objectives.

We ensure that all aspects of care and business conduct are performed in compliance with our mission/ vision statement, policies and procedures, professional standards and applicable governmental laws, rules, regulations and other payor standards.

The Chapter expects every person who provides services to our consumers to adhere to the highest ethical standards and to promote ethical behavior. Any person whose behavior is found to violate ethical standards will be disciplined appropriately.

Agents of the Chapter may not engage in any conduct that conflicts – or is perceived to conflict – with the best interest of the Chapter. Additionally, agents of the Chapter members must disclose any circumstances where the agent or his or her immediate family member is an employee, consultant, owner, contractor or investor in any entity that (i) engages in any business or maintains any relationship with the Chapter, (ii) provides to, or receives from, the Chapter any consumer referrals; or (iii) competes with the Chapter. Agents may not, without permission of the Compliance Officer accept, solicit or offer anything of value from anyone doing business with the Chapter.

Employees are expected to maintain complete, accurate and contemporaneous records as required by the Chapter. The term "records" includes all documents, both written and electronic, that relate to the provision of Chapter services or provide support for the billing of Chapter services. Records must reflect the actual service provided. Any records to be appropriately altered must reflect the date of the alteration, the name, signature and title of the person altering the document and the reason for the alteration if not apparent. No person shall ever sign the name of another person to any document. Signature stamps shall not be used. Backdating and predating documents is unacceptable and will lead to discipline up to and including termination.

The Chapter will participate in advocacy efforts with local, state, and federal governments. This will be done with an emphasis on the common good, regardless of the political party involved or of personal political affiliations. When representing the agency, no member of the governing body, employee, or volunteer will verbally, publicly, or monetarily support a specific candidate or political party either directly, or indirectly through the use of Political Action Committees.

When any person knows or reasonably suspects that the expectation above have not been met, this must be reported to supervisors, the Corporate Compliance Office or the Executive Director, so each situation may be appropriately dealt with. The CCO may be reached at (607) 734-6151 extension 121 or the anonymous hotline, extension 555 from an agency iPitomy phone or (607) 333-9252 from all other phones.

Our Code of Conduct

All agents of the Arc of Chemung-Schuyler are expected to follow the Code of Conduct. Each person is expected to sign an *Acknowledgement Form* upon receipt and review of the Code of Conduct.

Supervisors are expected to set a positive example for employees particularly with respect to the Code of Conduct. We expect supervisors to create an environment where all employees feel free to raise concerns and propose ideas. We expect that supervisors will ensure employees have sufficient information to comply with laws, regulations and Chapter procedures. Supervisors must maintain a culture which promotes the highest standards of ethics and compliance.

The Arc of Chemung-Schuyler has a commitment to:

1. The People We Support: We are committed to providing the highest quality of care, in a caring and compassionate manner.

2. The Communities We Support: We are committed to understanding the unique needs of the people we support and to provide our services in a cost-effective and quality manner.

3. Our Employees: We are committed to a work setting which is safe, which treats all employees with fairness, dignity and respect, which affords all employees an opportunity to grow, to develop professionally and to work in a team environment where all ideas are considered.

4. Our Third-Party Payors: We are committed to working with our payors in a way that demonstrates our commitment to our contractual obligations and reflects our shared concerns for quality services provided in an efficient and effective manner. We encourage our payors to adopt their own set of ethical principles that recognize their obligations to the people we serve, as well as the need for fairness between providers and payors.

5. Our Regulators: We are committed to creating an environment in which compliance with applicable rules, laws and regulations is woven into the fabric of The Arc of Chemung-Schuyler. We accept responsibility to self-govern and monitor adherence to requirements of law and our Code of Conduct.

6. Our Suppliers: We are committed to fair competition among existing and prospective suppliers. We encourage our suppliers to adopt their own set of standards and ethical practices.

Our Rules of Conduct

The Arc of Chemung-Schuyler believes that certain Rules of Conduct must be observed to promote a positive and ethical work environment and pledges to abide by laws, regulations and Chapter procedures, particularly those related to the Chapter's Corporate Compliance Plan.

As people who are working for and on behalf of the Arc of Chemung-Schuyler, we have the added responsibility of following specific Rules of Conduct, as follows:

- To work cooperatively and respectfully with all agency employees, Board Members and volunteers to provide the highest quality of services;
- To place the interests of the people we serve and their family members first and foremost in all aspects of what we do. This shall specifically include the following:
    - People shall not engage in any activity that constitutes abuse of the people we support;
    - The people we serve shall not carry out the duties of employees;
    - The people we serve shall not be subject to inappropriate exposure to firearms or other weapons in or on the grounds of the agency. *(This does not preclude a person served from pursuing the opportunity to attend hunter safety training.)* Firearms and other weapons are not permitted to be stored on the grounds of the agency;
    - Financial transactions between employees and the people we serve shall be prohibited; and
    - Employees need to model appropriate behavior to the people we support;
- To represent the Arc of Chemung-Schuyler positively, truthfully and accurately in the community;
- To conduct all activities in a fiscally responsible manner, including contractual agreements and the use of time;
- To work in accordance with applicable laws, regulations, and Chapter procedures. This includes, but is not limited to: Federal and State False Claims Act laws and all environmental, health and safety requirements;
- To refrain from distributing, selling, possessing, purchasing or consuming illegal substances or alcohol while at work; this also precludes attending work while under the influence of alcohol, and/or illegal or legal substances, that would impair work performance;
- To seek training and assistance in areas that would strengthen the ability to fulfill responsibilities to the people we serve and the Arc of Chemung-Schuyler;
- To refrain from discriminatory or harassing behaviors for any reason, and to refrain from the use of obscene, abusive or threatening language and gestures, fighting and gambling. Good faith participants of the Corporate Compliance Plan shall be protected from any intimidation and/or retaliation;
- To avoid conflicts of interest, including acceptance and giving of gifts; this shall include that gifts shall not be offered to potential referral sources, or their families;
- Potential referral sources shall not receive financial benefits to increase the volume of referrals to the Chapter;
- To conserve resources of the Arc of Chemung-Schuyler by not engaging in wasteful behavior, including the misuse of time;

- To treat confidential information appropriately and respect the privacy of the people we serve and our employees. Confidential information shall only be utilized in a professional manner and subject to relevant laws and regulations;
- To complete tasks in a timely manner and meet the quality expectations of the Chapter;
- To bill individuals and third-party payors accurately and if an error is discovered, we will correct it as soon as possible;
- To report to a supervisor, the Executive Director or to the anonymous, Corporate Compliance Hotline (607-734-6151, ext. 555 or 607-333-9252), any potential violation of applicable laws, regulations and procedures, including the Corporate Compliance Plan;
- To assist the agency in its internal investigations in an honest, reliable and trustworthy manner;
- To respect the role of the Board and management and to fully implement their decisions; and
- To consult agency leadership when questions arise regarding the conduct permitted under applicable laws, regulations and policies, including the Corporate Compliance Plan.

III. The Role of the Corporate Compliance Officer

The Corporate Compliance Officer is vested with the responsibility for the day to day operation of the compliance program. The Board of Directors of the Arc of Chemung-Schuyler designates Mary Therese Owen as the Corporate Compliance Officer (CCO). The CCO has direct lines of communication to the Executive Director, the Board of Directors, and Chapter counsel. The Corporate Compliance Officer is an employee of the Chapter. In the event that the CCO is unavailable for an extended period of time due to disability or otherwise, an interim CCO shall be appointed by the Executive Director.

The CCO is directly obligated to serving the best interests of our Chapter, persons served and Chapter agents. Responsibilities of the CCO include, but are not limited to:

1. Developing and implementing compliance procedures;

2. Overseeing and monitoring the implementation of the Compliance Plan (CP);

3. Directing internal Chapter audits established to monitor effectiveness of compliance standards;

4. Providing guidance to all agency representatives regarding procedures and governmental laws, rules and regulations;

5. Updating, periodically, the CP as changes occur within the Chapter, and/or in the requirements of laws and regulations or governmental and third-party payors;

6. Overseeing efforts to communicate awareness, the existence and contents of the CP;

7. Developing an annual compliance work plan to guide implementation of the CP;

8. Coordinating, developing and participating in the educational and training program to ensure all agency representatives understand the CP;

9. Oversees efforts to inform all agency representatives, including independent contractors (consumer care, vendors, billing services, etc.) are aware of the requirements of the Chapter's CP;

10. Actively seeking up-to-date material and releases regarding regulatory compliance;

11. Maintaining a reporting system, including a method for anonymous and confidential good faith reporting of potential compliance issues, and responding to concerns, complaints and questions related to the CP;

12. Acting as a resourceful leader regarding regulatory compliance issues, including all applicable laws, regulations, and agency procedures;

13. Ensuring linkage between the compliance program, quality assurance, and credentialing, including providing appropriate certifications to the Office of the Medicaid Inspector General;

14. Coordinating internal investigations and implementing corrective action, including but not limited to, training/retraining, sanctioning/termination of individuals associated with the organization, repayment of payment for services, self-disclosure, and/ or other appropriate action and

15. Serving as a member of the Corporate Compliance Committee and appearing periodically, but at least annually, before the Board's Executive session to allow for time, without other staff present, report any untoward compliance events as necessary and provide an opportunity for Board Members to ask any direct questions in this regard.

The Structure, Duties and Role of the Corporate Compliance Committee

The Corporate Compliance Officer (CCO) is appointed by the Executive Director and approved by the Board of Directors to advise and assist the Corporate Compliance Committee (CCC) with the implementation of the Compliance Plan (CP).

The CCC members should have broad back ground, experience levels and expertise in operations, monitoring, quality, service delivery, credentialing and legal/regulatory compliance.

The roles of the Corporate Compliance Committee include:

1. Analyzing the environment in which the Chapter does business, including legal requirements with which it must comply;

2. Conducting regular assessment to identify potential areas of risk;

3. Reviewing and assessing existing procedures that address these risk areas for possible incorporation into the CP;

4. Working with departments to develop standards and procedures that address specific risk areas and encourage compliance according to legal and ethical requirements;

5. Advising and monitoring appropriate departments relative to compliance matters;

6. Developing internal systems and controls to carry out Compliance Standards (CS) and procedures;

7. Monitoring internal and external audits to identify potential non-compliant issues;

8. Implementing corrective and preventive action plans;

9. Developing a process to solicit, evaluate and respond to complaints and problems and

10. Conducting regular reviews of the CP and its attachments to determine if updates or revisions are needed.

Delegation of Substantial Discretionary Authority

Pre-employment/participation background checks

The agency conducts background checks on all candidates who submit an application for employment or long-term/program volunteer (i.e. field placement, student intern, community volunteer - 30+ hours). Chapter procedures HR-020 and HR-025, describe the process for completion of Background Checks for Criminal History and Child Abuse Registry Checks. All employees and contracted practitioners will be appropriately credentialed prior to associating with the Chapter and while associated with the Chapter.

Conflicts of Interest

Any employee, prospective employee, or member of the Board of Directors who holds, or intends to hold, a position with substantial discretionary authority for the Chapter, is required to disclose any name changes, and any involvement in non-compliant activities to the Chapter. In addition, the Chapter performs reasonable inquiries into the background of such applicants and also, contractors and selected vendors. Chapter procedure CC-025 describes the Chapter's process for disclosing potential conflict of interest. This includes the Executive Director, Leadership Team members and Finance Department employees signing an annual *Conflict of Interest statement*. The Board of Directors has its own, annual process through which they disclose conflicts of interest.

Physician Arrangements

The Chapter may enter into financial arrangements with physicians in order to meet the needs of the people we serve. All such arrangements must be structured in light of federal and state laws. There are three categories of potential financial relationships with physicians who also act as referral sources that the Chapter may undertake:

1. Employment Agreements
2. Personal Service Agreements and
3. Equipment and Space Rental Arrangements.

If a program desires to enter into a financial arrangement with a physician (ex. Medical Director), the program shall work with the Corporate Compliance Officer to ensure that the arrangement meets federal and state laws. All contracts of this nature shall be reviewed by counsel to ensure compliance as well.

All arrangements shall be in writing and be for a term of at least one year.

All arrangements must be undertaken without regard to the value or volume of physician referrals and must not include any intention to induce referrals. Payments will be fair market value.

Copies of all contracts are to be kept in a central location in the Business Office.
When the Chapter identifies the need for a Physician Agreement, the Chapter shall utilize Procedure CC-080, Physician Arrangements as a guide for development of the contract.

Exclusion lists

The Chapter will remove from direct responsibility or involvement in any federally or state-funded programs any employee, volunteer, independent contractor, Board member or selected vendor who has participated in demonstrated non-compliant activities related to the provision of services; or is subject to actual or proposed exclusion from participation in federally or state-funded programs.

As explained in Procedure CC-045, the agency will query the following databases upon hire and monthly for all Board and committee members, employees, program/long-term volunteers, contractors and selected vendors that may impact a program's Medicaid funding:

- New York Medicaid Exclusion List -
  The NYS Medicaid Exclusion List identifies individuals or entities who have been excluded from participating in the NYS Medicaid program under the provisions of 18 NYCRR § 515.3 and/or 18 NYCRR § 515.7.

- Office of Inspector General / List of Excluded Individuals/Entities -
  The Excluded Individuals/Entities list identifies parties who are excluded from participating in federal health care programs, either directly or indirectly based on program-related fraud, patient abuse, licensing board actions and defaulting on student loans.

- Office of Inspector General / Most Wanted -
  This list consists of those parties who are the most wanted health care fugitives that have yet to be caught and convicted.

- System of Award Managements / Excluded Parties -
  This list consists of parties excluded from doing business with the federal government, including healthcare programs receiving Federal funding or reimbursement. Identified parties have been barred from any federal program participation due to fraud, theft, embezzlement, breach of fiduciary responsibility or other financial misconduct.

- and Office of Foreign Assets Control.
  This list consists of individuals and companies owned, controlled or acting on behalf of targeted countries, groups and individuals.

Additionally, where applicable, licensure and disciplinary records will be reviewed with NYS Office of Professional Medical Conduct (Physicians, Physician Assistants) and/or New York State Department of Education (other licensed professionals).

IV. Education and Training

Education and training are critical elements of the CP. All employees are expected to be familiar and knowledgeable about the Chapter's CP and have a solid working knowledge of his or her responsibilities under the Plan. Compliance procedures and standards will be communicated to all affected parties, including employees, Board members and volunteers through required participation in training programs. Attendance at compliance training sessions is mandatory and is a condition of continued employment.

Employees

All employees, including the Corporate Compliance Officer, the Executive Director, senior administrators and managers, shall receive a written copy of the compliance plan, as part of their training within the first three months of hire. In addition, all employees shall participate in annual training on the topics identified below:

- General information regarding Corporate Compliance,
- Identification of the Corporate Compliance Officer, the Corporate Compliance Committee and their roles and responsibilities,
- Introduction and acknowledgement of receipt of the Corporate Compliance Plan,
- Knowledge of Corporate Compliance procedures,
- Steps to report a Corporate Compliance concern,
- Access to the anonymous CC hotline (ext.555 via agency iPitomy phones, 607-333-9252 from all other phones),
- Duty to report misconduct,
- Review of State and Federal laws, such as, but not limited to: False Claims Act, Deficit Reduction Act, Anti-Kickback Statute and Red Flag Rule,
- Whistleblower protections including non-retaliation and non-intimidation,
- Proper documentation of services rendered,
- High risk areas for fraudulent conduct and
- Examples and scenarios involving misconduct.

Board of Directors

All Board Members will receive a copy of the CP at orientation and shall participate in annual information sessions on the topics identified below:

- General information regarding Corporate Compliance,
- Requirements of the Agency in relation to having:
    - A Corporate Compliance Plan,
    - Corporate Compliance Procedures,
    - The Corporate Compliance Officer, and
    - A Corporate Compliance Committee (CCC)
- Relationship of the CCC to the Board,
- Conflict of Interest Statements and
- The False Claims Act.

All Board Members shall participate in periodic updates regarding changes to the Corporate Compliance Program at the Agency. These will generally be presented at Board Meetings as needed.

Volunteers

All program/long term volunteers are expected to complete Corporate Compliance Training similar to that provided to paid employees as part of their orientation. All education and training relating to the compliance plan are required and will be verified by attendance and a signed acknowledgement of receipt of the Chapter's standards and Code of Conduct. The Staff Development Manager shall record all such information.

V. Effective Confidential Communication

Open lines of communication between the CCO and Chapter agents subject to this plan are essential to the success of our Compliance Program. Every agent has an obligation to refuse to participate in any wrongful course of action and to report such actions.

Examples of non-compliance include, but are not limited to:

- Inaccurate or falsifying documentation,
- Theft of and damage to agency resources,
- Inaccurate billing and/or payments,
- Quality of care and/or medical necessity of services or
- Regulatory concerns.

Reporting a CP violation

If you witness, learn of, or are asked to participate in potential non-compliant activities, in violation of this CP, you must contact your supervisor, the CCO or the Executive Director. Reports of non-compliance may be communicated to the CCO by any of the following methods:

Method	**Contact information**
In person	711 Sullivan St., Elmira, NY 14901
Interoffice mail	Attn: Mary Therese Owen, CCO
Standard mail	The Arc of Chemung-Schuyler Attn: Mary Therese Owen, CCO 711 Sullivan St., Elmira, NY 14901
Phone	(607) 734-6151 ext. 121 (607) 535-6934 ext. 122
Email	owenma@arcofcs.org
CC Hotline*	(607) 734-6151, ext. 555
	(607) 333-9252

*Please Note: When calling the CC Hotline, neither your name nor the extension from which you are calling from will be known to the CCO. Therefore, if additional information or follow up is needed, the CCO will not be able to do so unless you leave contact information.

Any employee or agent may seek guidance with respect to the CP, Code of Ethics or Code of Conduct, at any time by following the reporting mechanisms outlined above. Any potential non-compliance by the Executive Director should be reported to the CCO.

Upon receipt of a question or concern, any supervisor, officer or director, shall document the issue at hand and report it to the CCO. Any questions or concerns relating to potential non-compliance by the CCO should be reported immediately to the Executive Director.

When reporting a CP violation, your identity will be safeguarded to the fullest extent possible.

Any good faith report of any suspected violation of this plan by following the above or reporting to any governmental agency such as but not limited to the Office of the Medicaid Inspector General (OMIG), Department of Health (DOH), the Office for People with Developmental Disabilities

(OPWDD), the Department of Labor (DoL) and/or the Office Inspector General (OIG) shall not result in any retaliation or intimidation. Any threat of reprisal against a person who acts in good faith pursuant to his or her responsibilities under the Plan (including reporting; participating in an investigation; and assisting in a self-evaluation, audit or remedial action) is acting against the Chapter's Compliance Policy. Concerns about possible retaliation or intimidation should be reported to the CCO or your supervisor. Any discipline, up to and including termination of employment or other association with the Chapter will result if such reprisal is confirmed.

The CCO or designee shall record the information necessary to conduct an appropriate investigation of all complaints. If anyone is seeking information concerning the Code of Ethics or its application, the CCO or designee shall record the facts of the call, the nature of the information sought and respond as appropriate. The Chapter shall, as much as is possible, protect the anonymity of the person who reports any complaint or question.

VI. Enforcement of Compliance Standards

Employees who fail to comply with the Chapter's Compliance program, or who have engaged in conduct that has the potential of impairing the Chapter's status as a reliable, honest, and trustworthy provider will be subject to disciplinary action. Disciplinary actions will be consistently applied and determined based on the severity and/or frequency of the offence and can range from verbal warnings to termination.

Employees may be subject to discipline for the following infractions:

- Violating the Compliance program, Code/Rules of Conduct, laws, regulations and/or agency policies and procedures,
- Failing to report suspected compliance issues,
- Participating in non-compliant behavior and
- Encouraging, directing, facilitating or permitting either activity or passively non-compliant behavior.

Any employee disciplinary actions will be handled by the Human Resources Department and will be appropriately documented in the employee's personnel file, along with a written statement of the reason(s) for imposing such discipline. The CCO shall maintain a record of infractions that the Corporate Compliance Committee should be made aware of and will provide updates on such issues to the CCC.

VII. Assessment of Risk via Auditing and Monitoring

Ongoing evaluation is critical in detecting non-compliance and will help ensure the success of the Chapter's compliance program. An ongoing auditing and monitoring system, implemented by the CCO, in consultation with the CCC, is an integral component of our auditing and monitoring systems.

This ongoing evaluation shall include the following:

- Review of relationships with third-party contractors, specifically those with substantive exposure to government enforcement actions,

- Compliance audits as stated in the Plan, conducted by the CCO or designee, and

- Review of documentation and billing relating to Medicaid and Medicare claims development and submission performed internally or by an external consultant as determined by the CCO and CCC. The audit results shall be documented by the CCO. The Program Director shall prepare a Management Response. The audit results and Management Response shall together be presented to the Corporate Compliance Committee.

Should a Quality issue become evident that would impact the Corporate Compliance Program at the Arc of Chemung-Schuyler, including, but not limited to, those that might impact the reimbursement of services, that issue will be brought to the attention of the Corporate Compliance Committee. The Committee shall discuss the issue and determine an appropriate course of action.

The audits and reviews will examine the Chapter's compliance with specific rules and procedures through onsite visits, personnel interviews, general questionnaires (submitted to employees and contractors), medical and clinical record reviews to support claims for Medicaid/Medicare reimbursement, and documentation reviews.

Additional steps to ensure the integrity of the CP will include:

- Annual review with legal counsel of all records of communications and reports by all employees or contractors kept in accordance with this Plan,

- Any correspondence from any regulatory agency charged with administering a federally or state-funded program received by any department of the Chapter shall be immediately copied and forwarded to the CCO for review and discussion by the CCC and

- Immediate notification of the CCO of any visits, audits or investigations by any federal, state or county agency or Corporate Compliance related authority.

Establishment of a process detailing ongoing notification by the CCO to all appropriate personnel of any changes in laws, regulations or policies, as well as appropriate training to assure continuous compliance.

PPACA - Patient Protection and Affordable Care Act

The Patient Protection and Affordable Care Act was signed into Federal Law in March 2010 by President Obama. Section 6402 of PPACA refers to Medicare and Medicaid Program Integrity Provisions. Section 6402 (d) discusses the reporting and returning of overpayments. It is expected that The Arc of Chemung-Schuyler will adhere to the requirements of PPACA.

In general, if a person has received an overpayment, the person shall **report and return** the overpayment to the Secretary, the State, an intermediary, a carrier, or a contractor, as appropriate, at the correct address;

And

Notify the Secretary, State, intermediary, carrier or contractor, to whom the overpayment was returned in writing of the reason for the overpayment.

In New York, overpayments should be returned, reported and explained to OMIG at:

Office of the Medicaid Inspector General
800 North Pearl Street
Albany, NY 12204

An overpayment is defined as "any funds that a person receives or retains under Medicare or Medicaid to which the person, after applicable reconciliation, is **not entitled** under Medicare or Medicaid. (Not entitled means: kickback, Stark Law, Eligibility, Conditions of Payment).

An overpayment must be reported and returned by the later of:

a. The date which is 60 days after date on which the overpayment was identified; or
b. The date on which any corresponding cost report is due, if applicable

Overpayments may be caused by a variety of issues such as:

- Duplicate payments for the same service,
- Services not actually rendered,
- Patient is deceased,
- Practitioner lacked required license or certification or has been excluded,
- Billing system error,
- No order for the service and/or
- Service not documented as required by regulation.

If a person knowingly does not report an overpayment, the False Claims Act could apply.

OMIG does state: "OMIG is not interested in fundamentally altering the day to day business processes of organizations for minor or insignificant matters. Consequently, the repayment of simple, more routine occurrences of overpayment should continue through typical methods of resolution, which may include voiding or adjusting the amounts of claims."

(*The information for this section was taken from the OMIG presentation dated July 2010.*)

VIII. System to Report Compliance Issues - Detection and Response

The CCO, Executive Director and the CCC shall determine whether there is any basis to suspect that a violation of the CP has occurred.

If it is determined that a violation ***may*** have occurred, the matter may be discussed with legal counsel, who will, with the CCO, concur on a plan of action and decide whether a more detailed investigation is warranted. This investigation may include, but is not limited to, the following:

- Interviews with individuals having knowledge of the facts alleged,
- A review of documents, and
- Legal research and contact with governmental agencies for the purpose of clarification.

If advice is sought from a governmental agency or fiscal intermediary or carrier, the request and any written or oral response shall be fully documented.

At the conclusion of an investigation the CCO shall issue a report to the Executive Director and CCC summarizing the findings, conclusions and recommendations and will advise if the facts indicate that a violation of the law has occurred.

The report will be reviewed with legal counsel if necessary. Any additional action will be on the advice of counsel.

If the Chapter identifies that an overpayment was received from any third party payer, the appropriate regulatory (funder) and/or prosecutorial (attorney general/police) authority will be appropriately notified with the advice and assistance of counsel. It is our policy to not retain any funds which are received as a result of overpayments. In instances where it appears an affirmative fraud may have occurred; appropriate amounts shall be returned after consultation and approval by involved regulatory and/or prosecutorial authorities. Systems shall also be put in place to prevent such overpayments in the future.

Regardless of whether a report is made to a governmental agency or prosecutorial authority, the CCO shall maintain a record of the investigation, including copies of all pertinent documentation. A Corporate Compliance Log will be kept by the CCO, as described in Chapter procedure CC-030, to document any corporate compliance concerns and the follow-up taken. This record will be considered confidential and privileged and will not be released without the approval of the Executive Director or legal counsel.

The CCO shall report to the CCC regarding each investigation conducted.

Voluntary Disclosure

The Arc of Chemung-Schuyler intends to respond appropriately and swiftly to violations of the law, regulations and/or the Chapter's Corporate Compliance Plan in order to protect the Chapter and to maintain the Agency's trustworthy reputation.

If the Chapter has confirmed that a violation has taken place, then corrective action will be taken. Notification to government officials will be considered with the consult of legal representation.

Identification of a Violation

If a violation is identified, it will generally be brought to the attention of the Corporate Compliance Officer (CCO). An individual may instead bring the issue to the Corporate Compliance Committee or the Executive Director.

The violation may have been identified through various avenues, including but not limited to: conversations between employees and the CCO, calls to the anonymous hotline (ext. 555), internal audits or outside investigations, audits and/or surveys.

Chapter Response to the Violation

The CCO will attempt to verify that a violation of the Corporate Compliance Plan, or state or federal law or regulation has taken place. The CCO will then (as appropriate) discuss the issue with the Executive Director and Legal Counsel. The CCO will then:

- Develop and implement a Plan of Corrective Action with the appropriate Leadership Team member,
- Notify the Corporate Compliance Committee,
- Resolve any issues of overpayment and
- Consult with Legal Counsel regarding notification of State or Federal Regulatory or Prosecutorial agencies.

Once the Corrective Action Plan has been developed, it should be approved by appropriate parties which may include the Executive Director, the Corporate Compliance Committee and/or the Board of Directors, depending on the severity of the violation.

Regular Progress Reports should be presented to the Corporate Compliance Committee to ensure that the plan is being implemented as designed.

The Chapter will make every effort to comply with applicable statutes, regulations and federal program requirements. The Chapter shall also document these efforts.

Voluntary Disclosure of Violations

The CCO, in consultation with the Executive Director, Corporate Compliance Committee and Legal Counsel, will evaluate the alleged violation to determine if a voluntary disclosure is appropriate. The disclosure may be to government officials, third party payors or other entities. Notification shall be made within a reasonable timeframe after discovering the violation. It may include return of monies previously paid to the Chapter.

IX. Whistleblower Protections

The Chapter will not retaliate against or intimidate any employee for reporting any good faith potential compliance concern, as noted in the Chapter's Employee Handbook. This applies to federal laws such as the False Claims Act, New York State Laws, local laws and/or agency procedures.

No director, officer, employee or volunteer of the agency, who in good faith reports any action or suspended action taken by or within the agency that is illegal, fraudulent, or in violation of any adopted policy of the agency, shall suffer intimidation, harassment, discrimination or other retaliation or adverse employment consequences for employees.

Reporting of events shall occur following the agency's "Confidential Communication Procedure: CC-020".

The agency's Corporate Compliance Officer is the designated as the Board liaison for this purpose. The CCO shall administer this procedure and report to the Board as appropriate. Directors who are employees cannot participate in any Board or committee deliberations or voting relative to administering the whistleblower procedure.

The subject of the whistleblower complaint may not be present or participate in the Board or committee deliberations or vote on the matter (except that nothing prohibits the person from providing background information or answering questions before deliberations/voting begin).

This information is also available in the Employee Handbook and on the Agency's website in the Corporate Compliance Plan.

Numerous laws prohibit discrimination against an employee for taking lawful actions in regard to the False Claims Act (including becoming a qui tam relator). An employee cannot be discharged, demoted harassed or otherwise be discriminated against if the they report a potential fraudulent event in good faith. If the Chapter committed any of those acts, the employee may be entitled to relief in the form of reinstatement, double back pay and compensation for any special damages, including litigation costs and reasonable attorney's fees.

Appendix A

OVERVIEW OF RELEVENT FEDERAL AND STATE LAWS/STATUTES

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 $10,957[1] and not more than $21,916[1] 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.

[1] Adjusted for inflation per 85 FR 37004, June 2020. An overview of the False Claims Act, including civil penalty amounts, can be found at *www.justice.gov/civil/false-claims-act*.

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 ties and penalties is made by the administrative agency, not by prosecution in the federal court system.

Anti-Kickback Statute (42 USC §§1320a-7b(b)

The Anti-Kickback Stature makes it a crime to knowingly and willfully offer, pay, solicit or receive any renumeration directly or indirectly to induce or reward patient referrals o the generation of business involving any item or service reimbursable by a Federal Health Care program.

Physician Referral Law (42 USC §§1395nn)

The Physician Self-Referral Law, often called the Stark Law, prohibits a physician from referring patients to receive "designated health services" payable to Medicaid or Medicare to an entity with which the physician or a member of the physician's immediate family has a financial relationship, unless an exception applies.

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 tracts 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 $10,000 per violation. If repeat violations occur within 5 years, a penalty up to $30,000 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 cam 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.