



To: Achieve Beyond employees and others affiliated with Achieve Beyond

From: Joseph Matuza, Corporate Compliance Officer

Date: May 2023

RE: Compliance Program and Federal Deficit Reduction Act

Achieve Beyond is committed to preventing and detecting fraud, waste and abuse. In support of this commitment, Achieve Beyond has established a Corporate Compliance Program. The purpose of the Corporate Compliance Program is to establish appropriate controls that will help ensure consistent compliance with the federal and State laws which govern our activities, and to detect violations of the law by employees and others affiliated with Achieve Beyond. The Corporate Compliance Program applies to important compliance risk areas, including billing, payment, ordered services, medical necessity, quality of care, governance, mandatory reporting, credentialing and contractor oversight.

Elements of Achieve Beyond's Corporate Compliance Program include:

- A Compliance Officer who is responsible for the day-to-day operations of the Corporate Compliance Program.
- Written standards of conduct, policies and procedures that describe compliance expectations and promote Achieve Beyond's commitment to compliance for all employees, directors, officers, managers, contractors, agents (collectively, "Affected Individuals") and others affiliated with Achieve Beyond.
- A Corporate Compliance Committee that operates and monitors the Corporate Compliance Program and initiates the necessary actions to correct any compliance problems.
- Regular, effective education and training programs for all Affected Individuals whose job descriptions include activities that are subject to the Corporate Compliance Program.
- Procedures to encourage Affected Individuals, clients, and others affiliated with Achieve Beyond to openly bring to the Corporate Compliance Committee's attention any situation that may be a violation of law or the Corporate Compliance Program without fear of threats, intimidation, retaliation or punishment.
- A system that allows for confidential and anonymous reporting of compliance issues or concerns.

- A system to respond to allegations of improper or illegal activities and the enforcement of appropriate disciplinary action against Affected Individuals who have violated the Corporate Compliance policies.
- Fairly and firmly enforced disciplinary policies that encourage good faith participation in the Compliance Program, that articulate expectation for reporting compliance issues and assisting in their resolution and that outline sanctions against Affected Individuals for: a) failing to report suspected problems; b) participating in non-compliant behavior; or c) encouraging, directing, facilitating or permitting non-compliant behavior.
- Compliance audits and/or other evaluation techniques to monitor compliance and assist in the reduction of potential problem areas.

A goal of the Corporate Compliance Program is to educate Affected Individuals with respect to federal and State statutes and regulations with which they must comply. In this regard, the federal Deficit Reduction Act (“DRA”) requires Achieve Beyond to provide all employees, contractors or agents who work in New York State with “detailed information” about:

- the federal False Claims Act
- the federal administrative remedies for false claims and statements
- New York State laws pertaining to civil or criminal penalties for false claims and statements
- whistleblower protections provided under federal and State laws
- the role of federal and State laws in preventing and detecting fraud, waste and abuse

This notice provides you with the information required by the DRA.

**Federal and New York Statutes
Related to Filing False Claims and Whistleblower Protections**

Numerous federal and State laws prohibit health care providers from submitting “false” or “fraudulent” claims to Medicare and Medicaid and other federally-funded health care programs. Presented below is a listing and description of various federal and State statutes related to the filing of false Medicare and Medicaid claims.

Federal Laws

A. Federal Claims Reporting

1. False Claims Act, 31 U.S.C. 3729-3733.

The federal False Claims Act imposes penalties and fines on individuals and entities that file false or fraudulent claims for payment from Medicare, Medicaid, or other federal health programs. The penalty for filing a false claim is \$13,508 - \$27,018 per claim and the recoverable damages are between two and three times the value of the amount falsely received. In addition, the false claims filer may have to pay the government’s legal fees.

The False Claims Act allows private individuals to file lawsuits in federal court, just as if they were federal prosecutors. 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.

2. Administrative Remedies for False Claims, 31 U.S.C. 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 \$13,508 for each claim. The agency may also recover twice the amount of the claim.

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 bringing lawsuits in the federal court system.

B. Whistleblower Protections

1. Federal False Claims Act, 31 U.S.C. 3730(h). An employee who is “discharged, demoted, suspended, threatened, harassed or in any manner discriminated against” because of the employee’s lawful acts under the federal False Claims Act is entitled to reinstatement, double back pay with interest, special damages, and litigation costs and attorneys’ fees.

New York State Laws

New York false claims laws fall into two categories: administrative and civil laws; and criminal laws. Many of the laws overlap. Some apply to recipient false claims, and some apply to provider false claims.

A. Administrative and Civil Laws

1. State Finance Law Article 13, New York False Claims Act. The New York False Claims Act imposes penalties and fines on an individual or entity that:
- a. knowingly presents, or causes to be presented a false or fraudulent claim for payment or approval;
 - b. knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;
 - c. conspires to commit a violation of paragraph on the New York False Claims Act;

- d. has possession, custody, or control of property or money used, or to be used, by the state or a local government and knowingly delivers, or causes to be delivered, less than all of that money or property;
- e. is authorized to make or deliver a document certifying receipt of property used, or to be used, by the state or a local government and, intending to defraud the state or a local government, makes or delivers the receipt without completely knowing that the information on the receipt is true;
- f. knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the state or a local government knowing that the officer or employee violates a provision of law when selling or pledging such property; or
- g. knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the state or a local government.

The potential penalty for violating the New York False Claims Act is (1) \$6,000 - \$12,000 per claim, (2) payment of between two and three times the State's damages, (3) payment of between two and three times the damages sustained by any local government, and (4) payment of the State's legal fees.

The New York False Claims Act allows private individuals to file lawsuits in State court. If the suit eventually concludes with payments back to the State, the person who started the case can recover a percentage of the proceeds based on whether the State did or did not participate in the suit.

2. 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 five 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.

3. Social Services Laws 145-c. If any person applies for or receives public assistance, including Medicaid, by intentionally making a false or misleading statement or misrepresenting, concealing or withholding facts (or committing an act intended to mislead, misrepresent, conceal, or withhold facts), then the person's needs shall not be taken in account in determining his or her need or the person's family's need, for six months if a first offense, 12 months if a second offense (or once if benefits received are \$1,000 - \$3,900), 18 months if a third

offense (or once if benefits received are over \$3,900) and five years for four or more offenses.

B. Criminal Laws

1. 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.
2. 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 any false or fraudulent claim for furnishing services, knowingly submits false information in order 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.
3. 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 statute has been applied to Medicaid fraud cases.
 - a. Fifth degree petit larceny involves property of any amount. It is a Class A misdemeanor.
 - b. Fourth degree grand larceny involves property valued over \$1,000. It is a class E felony.
 - c. Third degree grand larceny involves property valued over \$3,000. It is a class D felony.
 - d. Second degree grand larceny involves property valued over \$50,000. It is a class C felony.
 - e. First degree grand larceny involves property valued over \$1 million. It is a class B felony.
4. Penal Law Article 175, False Written Statements. New York has four crimes under this Article that involve false written statements and relate to filing false information or claims that have been applied in Medicaid fraud prosecutions.

- a. §175.05, Falsifying business records in the second degree 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 intent to defraud the State or a political subdivision. It is a Class E felony.
5. Penal Law Article 176, Insurance Fraud. New York has six crimes in this Article that apply to claims for insurance payment, including Medicaid or other health insurance.
- 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 B felony.
6. Penal Law Article 177, Health Care Fraud. New York has five crimes in this Article that apply to claims for health insurance payment, including Medicaid.
- a. Health care fraud in the 5th degree is knowingly filing, with the 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 within a year from a health plan. 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 aggregate within a year from a health plan. 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 aggregate within a year from a health plan. It is a Class C felony.
- e. Health care fraud in the 1st degree is filing false claims and receiving over \$1 million in aggregate within a year from a health plan. It is a Class B felony.

C. Whistleblower Protections

1. New York Labor Law 740. An employer may not take any Retaliatory Action (as defined below) against an employee (including a former employee or an independent contractor) if the employee objects to, refuses to participate in, discloses, or threatens to disclose information about the employer's policies, practices or activities that the employee in good faith reasonably believes (1) is in violation of a law, rule or regulation; (2) poses a substantial and specific danger to the public health and safety; or (3) constitutes health care fraud (as defined in Penal Law Article 177). Protected disclosures are those made to a supervisor, regulatory agency, law enforcement agency or public official (including testimony before a public body conducting an investigation).

The employee's disclosure outside the organization 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. However employer notification is not required if (1) there is an imminent and serious danger to the public health or safety; (2) the employee reasonably believes that reporting to the supervisor would result in a destruction of evidence or other concealment of the activity, policy or practice; (3) such activity, policy or practice could reasonably be expected to lead to endangering the welfare of a minor; (4) the employee reasonably believes that reporting to the supervisor would result in physical harm to the employee or any other person; or (5) the employee reasonably believes that the supervisor is already aware of the activity, policy or practice and will not correct such activity, policy or practice.

Prohibited "Retaliatory Action" includes an action taken by an employer or his or her agent to discharge, threaten, penalize, or in any other manner discriminate against any employee or former employee exercising his or her rights, including (i) actions or threats to discharge, suspend, or demote an employee; (ii) actions or threats to take actions that would adversely impact a former employee's current or

future employment; (iii) threats to contact or contacting United States immigration authorities; or (iv) otherwise reporting or threatening to report an employee's suspected citizenship or immigration status or the suspected citizenship or immigration status of an employee's family or household member.

If an employer takes Retaliatory Action against the employee, the employee may sue for an injunction to restrain the continued violation, reinstatement to the same or equivalent position, reinstatement of full fringe benefits and seniority rights, compensation for any lost back wages and benefits and attorneys' fees, a civil penalty of \$10,000 , and punitive damages if the finds the violation was willful, malicious or wanton.

2. New York Labor Law 741. A health care employer may not take any Retaliatory Action (as defined in Section 740 above) against an employee if the employee discloses or threatens to disclose certain information about the employer's policies, practices or activities to a supervisor, regulatory agency, law enforcement agency, public official, news media outlet, or public social media forum. Protected disclosures are those that assert and that relate to an activity, policy or practice of the employer, that the employee, in good faith, reasonably believes constitutes improper quality of patient care or improper quality of workplace safety.

The employee's disclosure outside the organization 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 improper quality of patient care or improper quality of workplace safety presents an imminent threat to public health or to the health of a specific patient or specific health care employee and the employee believes in good faith that reporting to a supervisor would not result in corrective action.

If an employer takes Retaliatory Action against the employee, the employee may sue for an injunction to restrain the continued violation, reinstatement to the same or equivalent position, reinstatement of full fringe benefits and seniority rights, compensation for any lost back wages and benefits and attorneys' fees, a civil penalty of \$10,000 , and punitive damages if he finds the violation was willful, malicious or wanton.

3. New York False Claims Act (State Finance Law 191). An employee who is "discharged, demoted, suspended, threatened, harassed or in any manner discriminated against" because of the employee's lawful acts under New York False Claims Act is entitled to an injunction to restrain continued discrimination, position reinstatement, restoration of fringe benefits and seniority rights, double back pay with interest, special damages, and litigation costs and attorneys' fees.

If you become aware of any compliance issues or have any questions regarding the information contained in this letter, please contact Joseph Matuza, Achieve Beyond's Corporate Compliance Officer, at (718) 762-7633 (x 190).