



Compliance and Ethics at The Arc Erie County New York

INTRODUCTION:

The Arc Erie County New York is committed to maintaining the highest ethical standards in the conduct of our day-to-day business. All employees, in every phase of their career with The Arc Erie County New York, should embrace Compliance every day by doing the right thing for the right reasons. Your commitment is essential to having a successful Corporate Compliance Program.

The Board of Directors and the Executive Officers Team of The Arc Erie County New York are committed to promoting a culture of Compliance in an environment where all employees, via a written Corporate Compliance Plan and a Standards of Conduct, can understand their individual role in promoting compliance and workplace ethics.

The goals of The Arc Erie County New York Corporate Compliance Plan include:

- Detect and correct payment and billing mistakes to resolve payment discrepancies and detect inaccurate billing.
- Make corrections/improvements quickly and efficiently in order to prevent compliance issues going forward.
- Maintain appropriate processes to repay overpayments.
- Create a system of checks and balances to prevent reoccurrence of any compliance issues
- Create a culture of compliance throughout the agency, that includes a commitment to integrity in all our operations.

To achieve this goal, the scope of The Arc Erie County New York's Corporate Compliance Plan will focus on the Compliance priorities and critical elements contained in the Office of the Medicaid Inspector General (OMIG) required elements for a provider's Compliance program.

We provide a number of ways for The Arc Erie County New York's employees to report potential violations of law, regulations or company policy. An important part of our Corporate Compliance Plan is providing our employees with a Corporate Compliance Hotline. The Hotline phone number is (716) 1-833-Arc-Erie ext. 2603. The Hotline is available for reporting potential violations and an employee may remain anonymous if he or she wants to do so. No employee can be retaliated against for making a good faith report.

With your help by incorporating Compliance every day, by doing the right thing, in the right way, at every turn, The Arc Erie County New York will set the industry standard by demonstrating that achieving and maintaining high ethical standards is not only the right thing to do but that it's also a good business practice.

Sincerely,

Douglas DiGesare
Chief Executive Officer
The Arc Erie County New York



THE ARC ERIE COUNTY NEW YORK CORPORATE COMPLIANCE PROGRAM

The Arc Erie County New York is committed to establishing and maintaining high standards of ethical conduct related to its business and operational practices. This document establishes an independent Corporate Compliance Program that will serve as the basis on which a strong corporate culture of Compliance to laws and regulations can rest. The Arc Erie County New York strongly believes in fostering an enterprise-wide culture of compliance. The Corporate Compliance Officer, the Operational Compliance Committee (OCC), the Corporate Compliance Committee, the Board of Directors (BOD), management staff and all employees, are responsible to foster a culture of Compliance supported by the effective implementation of The Arc Erie County New York's Corporate Compliance Plan. The Arc Erie County New York is committed to full compliance with all applicable federal and state program requirements and in maintaining a work environment that promotes and requires the highest ethical standards in the conduct of our business. The Arc Erie County New York implements and maintains an effective Corporate Compliance program to prevent, detect, and correct non-compliance with Medicaid's program requirements, as well as to prevent, detect, and correct any fraud, waste and abuse. The Arc Erie County New York delegates responsibility and authority to the Corporate Compliance Officer and the Operational Compliance Committee (OCC) for the oversight of the implementation and operation of the Corporate Compliance Program.

Our Mission – The Arc Erie County New York supports children and adults with disabilities, and their families, in achieving the desired quality of life by creating opportunities through comprehensive services.

Our Values –

ACHIEVE:

A – Attitude – we are positive, enthusiastic, and respectful

C – Collaboration – we work together to communicate clearly, effectively, and intentionally with everyone

H – Heart – we are kind and caring

I – Integrity – we do the right thing, even when nobody is watching

E – Empathy - we strive to understand another person's perspective or circumstance

V - Vision – we all have the opportunity to achieve our dreams and full potential

E – Excellence – we strive to be the best

ESSENTIAL ELEMENTS OF AN EFFECTIVE COMPLIANCE PROGRAM:

The Arc Erie County New York complies with the standards set forth by the e NYS Office of the Medicaid Inspector General (OMIG). Refer to **CC100.071 Corporate Compliance Overview Policy**. These elements are as follows:

- 1) Written Policy and procedures - the existence and implementation of written policies, procedures and standards of conduct to include a policy of non-intimidation and non-retaliation
- 2) The Compliance Officer and Compliance Committee - the designation of a Compliance Officer and Compliance Committee vested with responsibility
- 3) Training and Education - the provision of effective training and education of all affected individuals
- 4) Lines of Communication - the provision of effective (confidential) lines of communication to the compliance officer for the reporting of violations
- 5) Disciplinary Standards - disciplinary standards that encourage good faith participation in the compliance program
- 6) Auditing and Monitoring - establish and implement an effective system for the routine monitoring and identification of compliance risks.
- 7) A system for responding to compliance issues

WRITTEN POLICIES, PROCEDURES AND STANDARDS OF CONDUCT

The Arc Erie County New York's policies and procedures are written statements that have general applicability to employees of The Arc Erie County New York and are developed by a department or program to establish regulatory guidance, operational rules, promote operational efficiencies, or, in some cases, ensure Compliance with applicable laws. It is The Arc Erie County New York's policy, as set forth in this Compliance Plan, to ensure compliance with all regulatory, legislative and contractual requirements and it is the expectation that The Arc Erie County New York's policies, procedures and standards are reasonably capable of reducing the prospect of illegal or unethical conduct. The compliance policies provide the framework and structure for an effective compliance program. In conjunction with Program Directors, the Compliance Officer ensures that policies are developed and/or revised based on new and/or updated regulations and guidance.

The Arc Erie County New York Compliance Policies provide guidance to affected individuals on dealing with potential compliance issues, including:

- assist in identifying potential compliance issues, questions and concerns;
- set forth expectations for reporting compliance issues;
- explain how to report such issues, questions, and concerns to the Compliance Officer;
- establish the expectation that all affected individuals will act in accordance with the standards of conduct;
- establish the expectation that all affected individuals must refuse to participate in unethical or illegal conduct; and
- establish the expectation that all affected individuals must report any unethical or illegal conduct to the compliance officer.

Policy CC 100.054” Policy Development and Management” establishes the process for drafting, revising, and approving The Arc Erie County New York’s policies and procedures. Policies are available, accessible, and applicable to all affected individuals, and are located in The Arc Erie County New York intranet – W drive>Public>Agency Policies and Procedures. In addition, there is a folder on employees’ computer desktops entitled “Manuals” that provides a link to the policies and procedures. Annual review of compliance policies is described in the Operational Compliance Committee meeting minutes and in the Compliance Work Plan. Policy reviews are conducted by The Arc Erie County New York’s Service Director’s Team and Executive Officer’s Team, with input from relevant program staff. The goal is to review and approve new policies and procedures, to review existing policies and procedures and to update them to reflect the current regulatory environment, structures and/or functions of The Arc Erie County New York as they change, and to ensure retention of current policies and procedures per The Arc Erie County New York Records Retention guidelines.

Policy CC 100.004 “Reporting Compliance Concerns/Whistleblower/Anti-Retaliation Policy outlines the procedure to report compliance concerns and seeks to ensure that The Arc Erie County New York provides an environment that encourages people to report any suspected violations without fear of retaliation, intimidation, or retribution.

Standards of Conduct - The Standards of Conduct is a guide to employees, Board of Directors, volunteers, consultants, and contractors in their conduct when acting on behalf of The Arc Erie County New York. They provide written guidelines that outline standards for acting professionally, responsibly and with integrity. All employees, volunteers, consultants, contractors, and Board of Directors are required to abide by the Standards of Conduct. The Standards of Conduct provides expectations for fostering a culture of ethical behavior. The Standards of Conduct are signed at the time of hire/appointment to the Board of Directors and any time there are any changes/revisions. Refer to Policy **CC 100.055 “Compliance Standards of Conduct”**.

Business Relations – The Arc Erie County New York complies with all Generally Accepted Accounting Principles (GAAP) and applicable state and federal accounting regulations. The Arc Erie County New York strives to maintain efficient business practices and good cost control. The Arc Erie County New York follows practices of ethical, responsible, and reasonable procedures related to purchasing, agreements and contracts, and related forms of commitments. The Arc Erie County New York has established policies, procedures and standards that are reasonably capable of reducing the prospect of illegal or unethical conduct.

Fraud Waste & Abuse – Waste is the overutilization, underutilization, or misuse of resources. Fraud is the intentional deception or misrepresentation made by a person with the knowledge that the deception or misrepresentation could result in benefit to said person or to another person. Abuse covers practices that are inconsistent with sound fiscal, business or medical practices resulting in unnecessary costs, improper payment or payments for services that fail to meet professional standards of care or that are medically unnecessary.

Actual or suspected fraud or other misconduct is a violation of The Arc Erie County New York’s Standards of Conduct. It is the duty of employees or affiliates acting on behalf of The Arc Erie County New York to report actual or suspected misconduct. If an employee or an affiliate is contacted by law enforcement or other governmental agencies, such contact should immediately be reported to the

Corporate Compliance Officer.

Billing and payment standards – The Arc Erie County New York is committed to prompt, complete and accurate billing of all services provided to individuals. The Arc Erie County New York and its employees, volunteers, interns, contractors, and agents shall not make or submit any false or misleading entries on any bills or claim forms, and no employee, volunteer, intern, contractor or agent shall engage in any arrangement or participate in such an arrangement at the direction of another person, including any supervisor or manager, that results in such prohibited acts.

Employees shall refrain from the following practices and will report to the Corporate Compliance Officer any employee who is suspected or known to have acted in an inappropriate or unethical manner to include:

- Knowingly presenting, or causing to be presented, a false or fraudulent claim for payment or approval
- Knowingly making or using, or causing to be made or used, a false record or statement material to a false claim
- Billing for services not provided
- Submission of claims for payment or reimbursement of any kind that are untruthful and do not accurately reflect that services rendered are supported by relevant documentation.
- Duplicate billing
 - Billing for more time than is actually spent on the services.
- Conspiring to commit a violation of the False Claim Act
- Knowingly making or using or causing to be made or used, a false record or statement material to an obligation to pay money or transmit property to the state or federal governmental applicable regulatory agency or knowingly concealing or avoiding or decreasing an obligation to pay money or transmit property to the state or federal governmental applicable regulatory agency.

It is the responsibility of all employees and management staff to ensure that billing activities are performed in a manner consistent with Medicare, Medicaid and other payor regulations and requirements and in accordance with The Arc Erie County New York's department/program specific documentation/billing policies. To assist in its efforts to detect and prevent fraud, waste and abuse, The Arc Erie County New York's Compliance Department conducts regular audits and monitoring procedures to ensure ongoing compliance with Medicaid requirements. In addition, programs/departments conduct their own internal audits and documentation verification. Per **Policy CC100.068 Reporting and Resolving Billing Discrepancies/Self-Disclosure Policy**, The Arc Erie County New York will resolve payment discrepancies, detect inaccurate billings, void/self-disclose claims, and repay any overpayments as quickly and efficiently as possible. The Compliance Officer is responsible for ensuring self-disclosures are submitted to OMIG and that all corrective actions are implemented. In addition, The Arc Erie County New York conducts monthly interdepartmental meetings for the purpose of reviewing Medicaid billing, denials, billing standards, and billing errors.

Conflict of Interest - A conflict of interest (COI) is a situation in which a person or organization is involved in multiple interests, financial interest, or otherwise, one of which could possibly corrupt the motivation of the individual or organization. The Arc Erie County New York as a commitment to its

members and the public at large, strives to maintain the highest ethical standards in the delivery of programmatic services through the design, implementation, and adherence to clearly articulated policies and procedures in an effort to avoid either actual or the appearance of improper or undisclosed conflicts of interest. A COI arises when an employee's judgment may be affected by improper personal gain or benefit. The Arc Erie County New York's employees must act in a way that avoids actual or apparent conflicts of interest. All employees shall disclose to the Chief Executive Officer, or Designee, any possible conflict of interest at the earliest possible time. The Chief Executive Officer, or Designee, will determine the need and extent of disclosure to the Executive Committee of the Board of Directors. An employee having the conflict of interest shall abstain from both the deliberations and decision-making process. Any employee who is uncertain whether he/she has a conflict of interest in any matter shall request the Chief Executive Officer or his/her designee to determine whether a conflict of interest exists, and the Chief Executive Officer or designee shall resolve the question. Employees should be familiar with these examples and should discuss any potential conflict with the Corporate Compliance Officer. **Refer to Policy CC 100.043 Conflict of Interest.**

Some examples are as follows:

- Directly supervising a family member as a contractor, supplier, or employee of the agency
- Recommending the purchase of goods or services from a company for which your relative receives direct financial benefit, including salary, commission, or profit sharing
- Borrowing a piece of equipment from The Arc Erie County New York to do personal work or work for your outside business

Kickbacks - The Federal Anti-Kickback statute states that anyone who knowingly and willfully accepts or offers remuneration of any sort and in any manner intended to influence the referral of Medicare and Medicaid services can be held accountable for a felony. A "kickback" is defined as the giving of remuneration of any kind which is interpreted as "anything of value" or a payment made to someone who has facilitated a transaction or appointment. The Arc Erie County New York's employees and Board of Directors are prohibited from such action and shall not receive, willfully solicit, offer to pay, or receive remuneration of any kind, for the provision of services in violation of the Federal Anti-Kickback Statute.

Gifts - are defined as a tangible or intangible item of any value received from external resources/vendors, directly or indirectly by the employee as a means of obtaining preferential treatment. Employees may not accept personal gifts or entertainment from any vendor by any means, directly or indirectly, at any time of the year if the gift exceeds \$25.00 in value. This includes, but is not limited to, items of value, quasi-social invitations, credits for vendor promotions, money, performing service, loan, travel, entertainment, hospitality, things of promise or in any other form, under any circumstances, in which it could be reasonably inferred that the gift was intended to either influence the recipient into giving special consideration in the performance of official duties. Gifts, favors, services, entertainment, money, or other items of value should never be intended to influence or affect a person's decisions or actions.

Protection of The Arc Erie County New York Assets – The Arc Erie County New York's employees are responsible for and expected to manage Agency assets wisely. Assets include a fairly extensive list including but not limited to physical (office supplies, credit cards, food purchased for individuals, etc.),

financial and intellectual. Agency assets may never be used for personal gain. All Agency property used by an employee during his/her tenure with The Arc Erie County New York must be returned upon the termination of the employee; assets must be returned to Human Resources on the employee's last day worked. The Agency's telephone, email and voicemail systems are primarily for The Arc Erie County New York's business purposes. Employees should monitor their personal use of these systems as to not interfere with Agency business.

Screening of Employees and Contractors - The Arc Erie County New York is committed to maintaining high quality care and service. It is the policy of The Arc Erie County New York to ensure that all staff, providers, and entities it uses to provide services and goods in connection with the Agency's programs and services are appropriately qualified and eligible to do so. The Arc Erie County New York conducts appropriate screening and background checks of employees, volunteers, interns, providers, independent contractors, and business vendors as required by law. Exclusion screening is conducted prior to hiring and monthly thereafter. The Corporate Compliance Officer is responsible to ensure that staff and vendor exclusion screening is completed, and that this information is audited. The Arc Erie County New York's Human Resource Department is responsible to ensure that background screenings and required pre-employment documents are completed and maintained for each applicant/candidate/new hire employee for the Office of Children and Family Services (OCFS), the Office for Persons with Developmental Disabilities (OPWDD), the Office of Mental Health (OMH), and all Certified Programs connected to The Arc Erie County New York. The Arc Erie County New York's Finance Department is responsible to ensure that appropriate background checks of all vendors/contractors who are recipients of Agency funds, or who propose to perform work or furnish goods under agreements with The Arc Erie County New York are completed and maintained for each vendor/contractor.

Privacy Practices (HIPAA) - The Arc Erie County New York is committed to complying with federal, state and any rule or regulation associated with the privacy or protection of health and financial information, including but not limited to the Health Insurance Portability and Accountability Act (HIPAA) and HITECH Omnibus Rule. Such laws provide federal protections for individually identifiable health information held by covered entities and their business employees and gives individuals supported by The Arc Erie County New York an array of rights with respect to that information. The Arc Erie County New York's employees are required to comply with HIPAA and New York State privacy laws, as well as all agency policies and procedures. The Arc Erie County New York will ensure that individual health information and other proprietary, confidential, or nonpublic information about The Arc Erie County New York, the people we support, and/or other person or companies with whom we conduct business is handled in a manner to protect the information from inappropriate access, use and disclosure. A detailed description of The Arc Erie County New York Privacy Practices can be found in the Notice of Privacy Practices located on our website (www.arceriecounty.org).

Records Information Management – The records, data and information owned, used, or managed by The Arc Erie County New York must be accurate and complete. Employees are responsible for the integrity of the information, reports, and records they compose. The Arc Erie County New York's employees must comply with the Agency's Records Retention Policy. All The Arc Erie County New York's documents must be maintained in accordance with this policy.

Medical Necessity and Quality of Care - It is the policy of The Arc Erie County New York to continually review and examine the quality of the services that it provides, and to develop and implement procedures and practices that will ensure that The Arc Erie County New York programs are of the highest quality. The Arc Erie County New York is committed to the delivery of quality services, constantly evaluating, and measuring the services that are provided to the people we support. Internal audits, particularly service documentation audits, focus on the quality of written plans and documentation as well as the actual services and goals people are working toward. The Corporate Compliance Department also conducts routine quality audits such as internal nursing audits, which require the submission of a Corrective Action Plan.

For services to be considered medically necessary, they must be reasonable and necessary for the treatment of illness, injury, disease, disability, or developmental condition. Medical necessity is a critical factor for determining eligibility for Medicaid-reimbursable therapy and treatment services. The Arc Erie County New York follows Medicaid and any other applicable oversight agency guidelines to ensure medical necessary criteria is valid prior to a claims submission.

In order to improve the quality of services, The Arc Erie County New York maintains a system for the tracking and resolution of complaints from individuals and family members. In The Arc Erie County New York's community based programs, staff have been required to contact families and/or individuals on a regular basis and ask questions outlined on the "Individual/Family Quality Assurance Questionnaire" and document responses. These questions pertain to the quality of services/supports as well as to verify that staff are providing the services for which they are documenting and billing. Managers document these calls and, if there are any issues, ensure there is follow-up and resolution.

Governance – The Arc Erie County Board of Directors (BOD) is a fundamental part of the compliance program and has oversight of the compliance program. The BOD approves the Compliance Plan and any revisions, as well as approving the annual Compliance Work Plan. As detailed below, the Corporate Compliance Committee is actively involved with the Corporate Compliance Officer. The Compliance Officer provides annual compliance training/report to the BOD and participates in an annual executive session, without the presence of any other The Arc Erie County New York employees.

CORPORATE COMPLIANCE OFFICER AND COMPLIANCE COMMITTEE

The Compliance Officer is the focal point for The Arc Erie County New York's compliance program and is responsible for the day-to-day operation of the compliance program. The Compliance Officer is responsible for the monitoring and oversight of the adoption, implementation and maintenance of the compliance program and evaluating its effectiveness. The Compliance Officer assists The Arc Erie County New York in establishing methods to improve efficiency, quality of services, and reducing vulnerability to fraud, waste and abuse. The Corporate Compliance Officer is responsible for developing, monitoring, and reporting on the Corporate Compliance Work Plan. The Work Plan identifies compliance risk areas and ways in which these risks will be mitigated. Progress on the Work Plan is reviewed and assessed at Compliance committee meetings.

The Corporate Compliance Officer (CCO) has unfiltered, direct access to the Board of Directors and the Chairperson of the Board of Directors. The compliance function is connected to all management and the Board of Directors. The Compliance Officer will work closely with Program and Department Directors to foster and enhance compliance with all applicable program service regulations, operational policies and procedures, and billing requirements.

Per Policy CC100.069 Compliance Committee, the Operational Compliance Committee (OCC) is chaired by the Corporate Compliance Officer. The OCC is comprised of The Arc Erie County New York's Program Directors and also includes the Executive Officers Team. The purpose of the OCC is to ensure that the Compliance Officer has detailed involvement with the operational activities of The Arc Erie County New York. The OCC also ensures the ongoing collaboration across all programs and departments to resolve identified issues/risks and areas where high priority risk may exist. Together and, with the support of the Board of Directors, CEO and Compliance officer, the individual members of the Operational Compliance Committee will be responsible for the implementation and oversight of the Corporate Compliance Plan. The OCC has a charter which outlines duties and responsibilities, membership, and frequency of meetings. This charter is reviewed on an annual basis. The Operational Compliance Committee is responsible for assessing whether other duties assigned to the Compliance Officer hinder the Compliance Officer in carrying out their primary responsibilities, and whether the compliance officer can satisfactorily perform their responsibilities. The Committee must also ensure that the Compliance Officer is allocated sufficient staff and resources to satisfactorily perform their responsibilities for the day-to-day operation of the compliance program.

The Operational Compliance Committee will generally meet on a bi-monthly basis. The activities reported will include, but not be limited to, compliance/audit metrics, audit status, progress on the Compliance Work Plan, progress on the Risk and Quality Management Program, self-disclosures, exclusion screening, compliance training, and compliance investigations.

The Compliance Committee is chaired by a BOD member and includes BOD members and the Compliance Officer and meets on a quarterly basis. This committee reviews and approves the Compliance Plan. The committee approves the Compliance Work Plan and monitors progress throughout the year, making changes as needed based on risk assessments and progress reports. The committee will review all significant compliance investigations, significant audit findings, self-disclosures, and any other significant compliance issues. Minutes of these meetings are provided to The Arc Erie County New York Board of Directors

COMPLIANCE PROGRAM TRAINING AND EDUCATION

Policy CC 100.070 "Compliance Training Program" ensures that that all affected individuals receive and understand compliance training as it relates to compliance issues, expectations, and the compliance program operation. The Arc Erie County New York implements a compliance training and education program that includes in-person New Hire Orientation Training (utilizes a pre and post-test to evaluate effectiveness), in-person New Manager Training (utilizes an evaluation to measure effectiveness), and Annual Compliance Training (uses a post-test to measure effectiveness). This training is required by all The Arc Erie County New York's employees including the CEO and Board of Directors. At the time of hire, employees are required to read the Corporate Compliance Plan and sign

the Standards of Conduct. This training includes The Arc Erie County New York's risk areas and organizational experiences, policies and procedures, role of the Compliance Officer and committee, obligation to report, investigation process, protection from retaliation, and disciplinary standards. Annual training includes the False Claims Act, Anti-Kickback Status, how to identify and report suspected fraud waste and abuse and other compliance issues, and HIPAA – privacy and security rules, use and disclosure, and social media.

Compliance posters and whistleblower protection posters are posted at all sites to provide additional information. Ongoing training is provided as needed regarding regulations or policy changes and based upon identification of trends via internal and/or external audits. Surveys and/or other tools will be used to solicit feedback on training and on the Compliance Program.

The Arc Erie County New York maintains a compliance training program that outlines the following:

- The subjects or topics for training and education
- The timing and frequency of the training
- Which affected individuals are required to attend
- How attendance will be tracked
- How the effectiveness of the training will be periodically evaluated

The Compliance Officer and Chief Financial Officer or designee ensures that The Arc Erie County New York provides policies and procedures to vendors and contractors to provide education in The Arc Erie County New York's compliance expectations, the operation of the compliance program, guidance on dealing with potential compliance issues, disciplinary action, communication of compliance issues to appropriate compliance personnel, and how potential compliance problems are investigated and resolved. Contracts reflect OMIG requirements and recipients of this training sign an attestation.

The Compliance Officer will help ensure that the ongoing training of employees will meet Compliance and regulatory requirements by attending conferences and webinars, subscribing to publications and OMIG/OIG's email list, monitoring OMIG/OIG's website, and participating in provider network meetings to stay up-to-date and get ideas. The successful completion of The Arc Erie County New York's Compliance Training is required as an ongoing condition of employment. The Compliance Officer will track training participation and effectiveness throughout the year, providing updates at the compliance committee meetings.

LINES OF COMMUNICATION

A primary role of the Corporate Compliance Officer is to ensure a culture of compliance and compliance awareness within The Arc Erie County New York. Compliance every day is accomplished in part through the messaging delivered by the Compliance Officer and Compliance Department employees, and by the visible presence of Compliance Officer and Compliance Department employees in the operational areas of the organization. Additionally, The Arc Erie County New York provides resources that enable employees to have open lines of communication between the Compliance Officer and the employees to ensure easy access to ask questions and/or report compliance concerns.

Examples of such resources include:

Corporate Compliance Hotline posters, The Arc Erie County New York' website, the Corporate Compliance Plan, Compliance Training, email TIPS, and confidential contact to the Compliance Officer.

Policy 100.052 Rights and Responsibilities which includes the Grievance Process Form that is completed by the people we support, now includes how to report to the Compliance Officer and contains the compliance hotline number.

Per CC - 100.004 Reporting Compliance Concerns-Whistleblower-Anti-Retaliation Policy, The Arc Erie County New York to encourage employees, volunteers, interns, Board of Directors, and contractors to report violations or suspected violations of the agency's Standards of Conduct, Corporate Compliance Plan, and/or any suspected violations of laws or regulations that govern The Arc Erie County New York. It is the responsibility of all directors, officers, administration, employees, and volunteers to comply with these principles and to report violations or suspected violations in accordance with the False Claims and Whistleblower Policy. Whistleblower protections are intended to encourage and enable employees and others to raise serious concerns internally, so that The Arc Erie County New York can promptly address and correct inappropriate conduct and actions. The Arc Erie County New York supports and enforces a strict policy of non-retaliation for the good faith reporting of suspected compliance concerns. Reporting via the dedicated Corporate Compliance Hotline (does not have caller id) and to the Corporate Compliance Officer is available 24 hours a day. Utilizing the resources listed above is confidential and allows for anonymous reporting. The Arc Erie County New York has developed policies and procedures, processes, and systems for the identification of and response to compliance issues. Utilizing the tools in place to conduct timely investigations of identified issues, to proactively conduct self-assessments of business practices (self-reporting) and adherence to regulations and law are effective methods to demonstrate to our regulators our commitment to compliance.

The Arc Erie County New York shall keep complaints confidential to the degree possible as is consistent with a thorough investigation and applicable laws. If employee misconduct is determined, corrective action will take place in accordance with The Arc Erie County New York's standards for employee conduct. Corrective action may include internal remediation or referring the matter to appropriate civil or criminal authorities. No harassment or retaliation will be tolerated or made against any employee who makes a good faith complaint.

DISCIPLINARY STANDARDS

The Arc Erie County New York supports a Compliance culture by maintaining well publicized disciplinary guidelines. These policies are clearly written, apply to all employees, and are easily accessible and available to all employees in The Arc Erie County New York intranet – W drive>Public>Agency Policies and Procedures Guidelines regarding employee misconduct and disciplinary action are also outlined in the Employee Handbook which is available on the Arc Erie County New York employee portal. **Policy 100.021 Compliance Discipline** defines and establishes guidelines for corrective and disciplinary measures due to non-compliance and violations of The Arc Erie County New York's Compliance Standards of Conduct, policies, and procedures, and as well as non-compliance with federal statutes and regulations. The Arc Erie County New York encourages good faith participation in the compliance program, that all compliance-related disciplinary policies are

fairly and firmly enforced, and that policies are in effect that outline sanctions for participating in non-compliant behavior. Escalating disciplinary actions will be taken in response to non-compliance, with intentional or reckless behavior being subject to more significant action.

The Arc Erie County New York's Human Resources department and as appropriate, in conjunction with the Corporate Compliance Officer, maintain and communicate disciplinary policies. Employees, volunteers, and interns who fail to comply with The Arc Erie County New York's Compliance Program or who intentionally engage in conduct that is in violation of laws, regulations or who fail to report such violations are subject to disciplinary action(s).

The Compliance Officer tracks actions taken for non-compliance and works in collaboration with the Human Resources Director and Employee Relations Coordinator.

Per FIN 600.005 Vendor Screening-Checks Policy, each vendor/contractor shall be checked monthly by the Finance Department for potential exclusion against appropriate state and federal exclusion lists. Business partners, contractors, and outside vendors are responsible for complying with The Arc Erie County New York's Policies and Procedures. Potential disciplinary action for violations could include Corrective Action Plans (CAPs), retraining related to the identified violation or termination of the contract with the individual/entity.

AUDITING AND MONITORING

The Arc Erie County New York's compliance program is designed and implemented to prevent, detect, and correct non-compliance with Medicaid program requirements, including fraud, waste, and abuse. The Arc Erie County New York has established and implemented an effective system for routine identification and monitoring of compliance risks.

Per Policy CC 100.053 Compliance Risk Management, the Corporate Compliance Officer ensures the implementation of a process to identify compliance risk areas so that such risk areas are assessed, mitigated, and any needed corrective action is implemented. Based on the assessment findings, potential compliance risk areas are identified and documented. Risks are prioritized and are used by the Corporate Compliance Officer to develop the annual The Arc Erie County New York's Corporate Compliance Work Plan and Audit Plan, which are approved by the Operational Compliance Committee and the Corporate Compliance Committee. The Work Plan includes routine and targeted compliance tasks and identifies ways in which these risks will be mitigated.

Annually, the Corporate Compliance Officer conducts risk interviews with all Department Directors and department members as assigned by Directors and, together, identifies issues/risks and ways to mitigate these risks. The results of these interviews are incorporated into the Corporate Compliance Work Plan and the Risk and Quality Management Program Quarterly Reports. Each quarter, the Department Directors submit data to the Compliance Officer who is responsible for compiling, analyzing, and documenting all risk areas. The Operational Compliance Committee (OCC) reviews the quarterly risk and work plan progress reports and makes further recommendations, identifies trends, issues, etc. This is reflected in the OCC minutes. The Corporate Compliance Officer is also responsible

for reporting this information to the Corporate Compliance Committee for their review.

Per Policy CC 100.056 Internal Audit Record Review, routine internal record reviews are conducted and/or overseen by the Corporate Compliance Officer or designee to ensure compliance and to identify and share best practices. These assessments include specific regulations and requirements for which The Arc Erie County New York is held accountable by both state and federal regulators; compliance will be assessed with internal processes and procedures. The reviews are also intended to identify possible instances of error, fraud, waste, abuse and to implement necessary corrective action. Internal auditing of records is conducted/managed by the Compliance Officer/designee. The Compliance Officer is responsible for the implementation of a comprehensive and effective process for the internal and external monitoring and identification of compliance risks. An audit schedule is established as part of the annual Corporate Compliance Work Plan and the audit schedule will be regularly re-evaluated. Audits are based on “at risk” areas identified via the agency risk assessment, as well as analyzing which programs had deficiencies in internal and/or external audits, programs with self-disclosures, and deficiencies/trends noted in external audits. Audits will be completed more frequently if there are significant concerns with the site documentation, or if changes in regulations have occurred.

An internal audit may also be triggered by the discovery of a potential documentation/billing error during the course of routine employee/supervisor review of documentation. In such cases, the staff must immediately notify the Compliance Officer upon discovery. Failure to do so may result in disciplinary action up to and including termination.

The Compliance Officer/designee will prepare a written report of the findings and submit to program management staff. The Compliance Officer/designee ensures that all items identified in the internal audit summary have a written response/corrective action plan from the program/department, within 7-45 days of the completion of the audit.

The Compliance Dept. creates reports to include audit trends, root cause analysis of audit findings/issues, and CAP verification/effectiveness. and these are reviewed at the Operational Compliance Committee and the Corporate Compliance Committee meetings.

With input from Compliance Committee members, the Corporate Compliance Officer completes an annual compliance program effectiveness review by assessing compliance with OMIG regulations, and assessing data collected throughout the year on the Compliance Work Plan and Risk and Quality Management Program. This review focuses on whether the Medicaid compliance program requirements have been met, to determine the effectiveness of the compliance program, and whether any revision or corrective action is required.

RESPONDING TO COMPLIANCE ISSUES

In addition to auditing and monitoring, The Arc Erie County New York implements procedures to ensure a prompt response to compliance issues as they are raised, to investigate potential compliance issues, to correct such problems promptly and thoroughly, and to reduce the potential for recurrence. **CC 100.042 Corporate Compliance Investigations Policy** provides a formal documented process for responding to compliance issues. All reports of compliance issues will be promptly and thoroughly

investigated by the Compliance Officer/designee. The Compliance Officer determines the most appropriate agency personnel to conduct the investigation but retains ultimate supervision and responsibility for all Compliance investigations. The investigator (Compliance Officer or designee) collects relevant evidence, review related documentation, and conduct interviews to ensure the Compliance investigation is thorough. The investigator completes a written report, which may include recommendations for corrective action(s) which can include policy changes, additional staff training, disciplinary action, etc. If a Compliance violation is found, or there are any recommendations, the Program Director, in conjunction with the Compliance Officer will implement a corrective action plan. The Compliance Officer will develop and be responsible for creating a system or process to track the resolution of issues; additionally, the Compliance Officer will maintain documentation of all Compliance deficiencies identified and the corrective action(s) taken. Compliance Officer/designee will conduct ongoing monitoring of Corrective Action Plans (CAP) post implementation to ensure the effectiveness of the CAPs.

CERTAIN SPECIFIC LAWS APPLICABLE TO THE ARC ERIE COUNTY NEW YORK:

The Arc Erie County New York is committed to prompt, complete and accurate billing of all services provided to individuals who receive services from The Arc Erie County New York. The Arc Erie County New York and its employees, contractors and agents shall not make or submit any false or misleading entries on any bills or claim forms, and no employee, contractor or agent shall engage in any arrangement or participate in such an arrangement at the direction of another person, including any supervisor or manager, that results in such prohibited acts. Several of the statutes The Arc Erie County New York is required to comply with are listed below in this section of the Corporate Compliance Plan. The narratives relating to statutes listed below are not an exhaustive list of all the statutes and regulations that The Arc Erie County New York must follow nor are they complete summaries of all of the aspects or provisions in such statutes.

Overview:

A. Federal False Claims Act (31 U.S.C. §§ 3729 – 3733)

1. **Overview** - The False Claims Act is one of the laws the Government uses to prevent and detect fraud, waste and abuse in federal health care programs. The False Claims Act establishes liability for any person who “knowingly” submits a false claim either (1) directly to the Government or (2) to a contractor or grantee of the Government, if the money or property is to be spent or used on the Government’s behalf or to advance a Government program or interest. A violation of the False Claims Act can result in a civil penalty between \$10,781 and \$21,563 for each false claim submitted, plus up to three times the amount of the damages sustained by the Government due to the violation(s). The False Claims Act defines “knowingly” to mean that a person (1) has actual knowledge of the false claim; (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. Specifically, the False Claims Act may be violated by the following acts:

- a. Knowingly presenting, or causing to be presented, a false or fraudulent claim for payment or approval;
- b. Knowingly making or using, or causing to be made or used, a false record or statement material to a false claim;
- c. Conspiring to commit a violation of the false claims act; or
- d. Knowingly making, using, or causing to be made or used, a false record or statement material to an obligation to pay money or transmit property to the Government, or knowingly concealing or avoiding or decreasing an obligation to pay money or transmit property to the Government.

2. **Applicability** - Among other things, the False Claims Act applies to claims submitted for payment by federal health care programs, including Medicare and Medicaid.

3. **Examples** - A few examples of actions that violate the False Claims Act include knowingly:

- a. Billing for services that were not actually rendered;
- b. Charging more than once for the same service;
- c. Billing for medically unnecessary services; and
- d. Falsifying time records used to bill Medicaid.

4. **Methods of Enforcement** - The Government, or an individual citizen acting on behalf of the Government (a "Relator"), can bring actions under the False Claims Act. If a Relator brings an action under the False Claims Act, the Government has a period of time to investigate the allegations and decide whether to join the lawsuit. If the Government elects to join the lawsuit, the Relator is entitled to 15-25% of any recovery. If the Government elects not to join the lawsuit, the Relator may still proceed with the action and is entitled to 25-30% of any recovery.

5. **Employee Protection** - The False Claims Act prohibits discrimination by The Arc Erie County New York against an employee, contractor or agent for taking lawful actions in furtherance of an action under the False Claims Act. Under the False Claims Act, any employee, contractor or agent who is discharged, demoted, harassed, or otherwise discriminated against because of lawful acts in furtherance of an action under the False Claims Act is entitled to all relief necessary to make the employee, contractor or agent whole. Such relief may include reinstatement, double back pay, and compensation for any special damages, including litigation costs and reasonable attorneys' fees.

B. Federal Program Fraud Civil Remedies Act (31 USC §§3801-3812).

The Program Fraud Civil Remedies Act of 1986 is a federal law that provides for administrative recoveries by federal agencies including the Department of Health and Human Services, which operates the Medicare and Medicaid Programs. The law prohibits the submission of a claim or written statement that the person knows or has reason to know is false, contains false information or omits material information. Violations of this law are investigated by the Department of Health and Human Services and monetary sanctions may be imposed in an

administrative hearing setting. Monetary sanctions may include penalties of up to \$10,781 per claim and damages of twice the amount of the original claim.

C. Patient Protection and Affordable Care Act “PPACA

Patient Protection and Affordable Care Act “PPACA” (Pub. L. No. 111-148, 124 Stat. 119). The Patient Protection and Affordable Care Act of 2010 is a federal healthcare law that through amendments expanded provisions of the Federal False Claims Act. Most significantly, PPACA expanded FCA liability for possession of overpayments (42 U.S.C. § 1320a-7k). The law clarified that an overpayment must be reported and returned by 60 days after the date on which the overpayment was identified. Overpayments retained after the deadline are considered an obligation as defined in the FCA imposing FCA liability.

D. New York State False Claims Laws

1. New York State False Claims Act (State Finance Law §§187-194) The New York State False Claims Act was modeled after the Federal False Claims Act and its provisions are very similar. This Act provides that anyone who “knowingly” submits false claims to the Government is liable for damages up to three times the amount of the erroneous payment plus mandatory penalties between \$6,000 and \$12,000 for each false claim submitted. The False Claims Act defines “knowingly” to mean that a person (1) has actual knowledge of the false claim; (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. The Government, or an individual citizen acting on behalf of the Government (a “Relator”), can bring actions under the New York State False Claims Act. In addition, the New York State False Claims Act prohibits discrimination against an employee for taking lawful actions in furtherance of an action under the Act. Any employee who is discharged, demoted, harassed, or otherwise discriminated against because of lawful acts by the employee in furtherance of an action under the False Claims Act is entitled to all relief necessary to make the employee whole.
2. Social Service Law §145-b. Under this section, it is unlawful to knowingly make a false statement or representation, or to deliberately conceal any material fact, or engage in any other fraudulent scheme or device, to obtain or attempt to obtain payments under the New York State Medicaid program. In the event of a violation of this law, the local Social services district or the State has a right to recover civil damages equal to three times the amount of the incorrectly paid claim. In the case of non-monetary false statements, the local Social Service district or State may recover three times the damages (or \$5,000, whichever is greater) sustained by the government due to the violation. In addition, the Department of Health may impose a monetary penalty of up to \$10,000 per violation unless a penalty under the section has been imposed within the previous five years, in which case the penalty may be up to \$30,000.
3. Social Services Law § 145-c. Under this section, if any person individually or as a member of a family applies for or receives public assistance, including Medicaid, by intentionally making a false or misleading statement, or intending to do so, then the needs of that person shall not be taken into account for determining the needs of that person or those

of his or her family: (i) for a period of 6 months if a first offense; (ii) for a period of 12 months if a second offense, or upon an offense which resulted in the wrongful receipt of benefits in an amount of between \$1,000 and \$3,900; and (iii) for a period of 18 months if a third offense or upon an offense which resulted in the wrongful receipt of benefits in excess of \$3,900, and 5 years for any subsequent occasion of any such offense.

4. Social Service Law § 145 Under this section, any person who submits false statements or deliberately conceals material information in order to receive public assistance, including Medicaid, is guilty of a misdemeanor. This crime is punishable by fines and by imprisonment of up to one year.
5. Social Service Law § 366-b Under this section, any person who, with the intent to defraud, present for payment any false or fraudulent claim for services or merchandise, or knowingly submits false information for the purpose of obtaining compensation greater than that to which he/she is legally entitled to, shall be guilty of a class A misdemeanor.
6. Penal Law Article 155. Under this Article, 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 similar behavior. This Article has been applied to Medicaid fraud cases. This crime is punishable by fines and imprisonment up to twenty-five years.
7. Penal Law Article 175. Under this Article, four crimes relating to falsifying business records or filing a false instrument have been applied in Medicaid fraud prosecutions. These crimes are punishable by fines and imprisonment up to four years.
8. Penal Law Article 176. This Article establishes the crime of insurance fraud. A person commits such a crime when he/she intentionally files a health insurance claim, including Medicaid, knowing that it is false. This crime is punishable by fines and imprisonment up to twenty-five years.
9. Penal Law Article 177. This Article establishes the crime of health care fraud. A person commits such a crime when, with the intent to defraud Medicaid (or other health plans, including non-governmental plans), he/she knowingly and willfully provides false information or omits material information for the purpose of requesting payment for a health care item or service and, as a result of the false information or omission, receives such a payment in an amount to which he/she is not entitled. health care fraud is punished with fines and jail time based on the amount of payment inappropriately received due to the commission of the crime.
10. Labor Law §740. In addition to provisions contained in the Federal and New York State False Claim Acts, this section offers protections to employees who may notice and report inappropriate activities. Under New York State Labor Law §740, an employer may not take any retaliatory personnel action against an employee because the employee:

- discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer that is in violation of law;
- rule or regulation that presents a substantial and specific danger to the public health or safety, or which constitutes health care fraud;
- provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any such violation of a law, rule or regulation by such employer; or
- objects to, or refuses to participate in any such activity, policy or practice in violation of a law, rule or regulation.

To bring an action under this provision, the employee must first bring the alleged violation to the attention of the employer and give the employer a reasonable opportunity to correct the allegedly unlawful practice. The law allows employees who are the subject of a retaliatory action to bring a civil action in court and seek relief such as injunctive relief to restrain continued retaliation; reinstatement, back-pay and compensation of reasonable costs. The law also provides that employees who bring an action without basis in law or fact may be held liable to the employer for its attorney's fees and costs.

11. Labor Law §741. Under this section, an employer may not take any retaliatory personnel action against an employee if the employee, in good faith, discloses to a regulatory, law enforcement or other similar agency or public official certain information that the employee believes constitutes improper quality of patient care about the employer's policies, practices, or activities. The employee's disclosure is protected only if the employee first brought up the matter with a supervisor and gives 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. Labor Law §741 allows employees who are the subject of a retaliatory action to bring a civil action in court and seek relief such as injunctive relief to restrain continued retaliation; reinstatement, back-pay and compensation of reasonable costs.

Conclusion. The Corporate Compliance Plan has been prepared to outline the broad principles of legal and ethical business conduct embraced by The Arc Erie County New York. It is not a complete list of legal or ethical questions one might face in the course of business. The Corporate Compliance Officer, the Operational Compliance Committee and the Board of Directors are responsible to foster a culture of Compliance supported by the effective implementation of The Arc Erie County New York Corporate Compliance Plan. If you have a specific question with respect to this Corporate Compliance Plan, you should contact The Arc Erie County New York Corporate Compliance Officer.

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Effective Date: June 2017

Revised: 10/18

Revised: 1/19

Revised: 12/20

Revised: 1/22

Revised: 1/23

Revised: 3/23

Revised: 1/24