

Vendor and Subcontractor Compliance Obligations

Community Access
Quality Improvement
Department

This training is intended for educational use by Community Access's ("CA") vendors and subcontractors. This information shall not be construed as legal advice. Vendors and subcontractors are required to adhere to these or substantively similar compliance rules as part of working with CA.

CA vendors and subcontractors should contact the Quality Improvement Department (qi@communityaccess.org) if they have any questions pertaining to particular compliance issues or rules.

Section 1

Overview of Community
Access' Corporate
Compliance and Ethics
Program

Overview of Compliance and Ethics

- **Compliance** is an organizational culture that fosters the prevention, identification, and remediation of conduct that fails to comply with applicable law and/or an organization's own ethical and business standards of conduct.
- **Ethics** is doing the right thing and includes:
 - Complying with standards of conduct outlined in the CA code of conduct;
 - Acting fairly and honestly;
 - Complying with all applicable legal requirements, including fraud, waste, and abuse laws;
 - Following industry practices that are lawful, fair, and non-deceptive in nature
 - Adherence by professionals to applicable ethical standard of conduct dictated by their respective professional organizations; and
 - Reporting compliance violations.

Overview of Compliance

Community Access' Corporate Compliance Program focuses on:

- The prevention, detection, and correction of fraud, waste, and abuse
- Establishing and monitoring internal controls
- Risk identification, assessment, and prioritization.

Community Access' Chief Compliance Officer is **Bradley Moore**, bmoore@communityaccess.org.

Community Access' Compliance Officer is **Brittany Griffin-Cook**, bgriffin@communityaccess.org.

The Chief Compliance Officer and Compliance Officer are in charge of ensuring that Community Access complies with all applicable laws and its own standards of ethical conduct.

Overview of Compliance

NYS regulations require all providers that bill the Medicaid program \$1,000,000 or more annually to establish an effective compliance program in order to be eligible to order, bill or receive Medicaid payments for care, services, or supplies. Effective compliance programs must have:

- Written policies and procedures that describe compliance expectations as embodied in a code of conduct;
- Designation of a Compliance Officer and Compliance Committee;
- An effective Training and Education program;
- Direction communication lines which allow for the anonymous and confidential reporting of compliance issues;
- Disciplinary policies to encourage good faith participation in the compliance program; and
- A system to routinely identify and address vulnerabilities and risks;
- A system to respond to compliance issues as they are raised and/or identified.

CA's Code of Conduct

Community Access vendors and subcontractors must comply with the Community Access Code of Conduct or a substantively similar code of conduct.

The CA Code of Conduct sets forth the expectation that all covered parties will conduct business in a lawful and ethical manner and provides guidance on the prohibitions against improper billing, maintaining professional boundaries with program participants, the making/submission of false statements, illegal kickbacks, conflicts of interests, the improper disclosure of confidential program participant information and other compliance topics.

The Code of Conduct also applies to all workforce members of Community Access including but not limited to:

- All employees, volunteers and interns
- Members of CA's Board of Directors

Code of Conduct and Partner Responsibilities

The following are a few examples of actions that would be considered violations of the Code of Conduct:

- Violating Federal or NYS laws on fraud, waste, and abuse;
- Hiring or contracting with persons or entities excluded from participation in a Federal or NYS health care program;
- Engaging in conflicts of interest and/or violations of the CA Code of Conduct;
- Improperly using confidential, protected, or proprietary information;
- Engaging in workplace misconduct (e.g., conduct that is discriminatory, abusive or neglectful, amounts to sexual harassment, or constitutes intimidation as well as any act or threat of violence.
- Engaging in behavior that is not in accordance with the Code of Conduct and participating in unethical or illegal conduct.

Section 2

Fraud, Waste and Abuse
& Relevant Federal &
NYS Laws

Fraud, Waste and Abuse

Fraud means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to him/herself or some other person.

Fraud consists of, among other things, intentionally making false statements or misrepresentations or submitting false information in order to receive money or benefits to which one is otherwise not entitled.

Waste includes overusing services, or other practices that, directly or indirectly result in unnecessary costs to a Federal health care program. Waste is generally not considered to be caused by criminally negligent actions but rather a misuse of resources.

Abuse includes actions that may, directly or indirectly, result in unnecessary costs to a Federal health care program that involves payments for items or services when there is no legal entitlement to that payment. However, unlike fraud, the provider has not knowingly and/or intentionally misrepresented facts to obtain payment.

Fraud, Waste and Abuse

Examples of **Fraud** include:

- Knowingly billing for services or prescriptions not furnished or supplies not provided;
- Knowingly altering (or falsifying) claim forms, medical records or receipts to receive a higher payment; and
- Knowingly soliciting, receiving, offering, and/or paying for referrals related to a Federal health care program

Examples of **Waste** include:

- Conducting excessive visits or writing excessive prescriptions
- Prescribing more medications than necessary for a treatment of a condition; and
- Poor care coordination that results in multiple hospitalizations

Examples of **Abuse** include:

- Billing for services that were not necessary;
- Charging excessively for services and supplies; and
- Billing for brand name drugs when generic drugs are available

Federal False Claims Act ("FCA")

The FCA makes it illegal to knowingly (i.e. with actual knowledge as well as acting in deliberate ignorance or with reckless disregard of the truth), among other things:

- Conceal or improperly avoid or decrease obligations to pay the government;
- Make or use a false record or statement supporting a false claim;
- Present a false claim for payment or approval; or
- Conspire to violate the FCA.

Individuals can bring legal actions ("qui tam" actions) on behalf of the Federal government for false claims and are protected from retaliation for doing so. Penalties under the FCA include but are not limited to:

- Up to \$21,563 for each false claim;
- Plus three times the amount of damages; and
- Any costs the government incurs when an action is brought to recover any such penalty or damages.

Criminal Health Care Fraud Statute

In addition to civil liabilities which may be imposed for violations of the FCA, the Criminal Health Care Fraud Statute, in relevant part, makes it a Federal crime to knowingly and willfully execute or attempt to execute, a scheme or artifice to:

- “Defraud any health care benefit program”; or
- “Obtain by any means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the control of, any health care benefit program.”

Penalties include fines, imprisonment, or both.

Physician Self- Referral Law ("Stark Law")

The Physician Self- Referral Law, often called the Stark Law, prohibits (with some expectations) a physician from making a referral for certain designated health services payable by Medicare or Medicaid to an entity in which the physician (or his/her immediate family member) has a financial relationship.

Financial relationships can be defined as those in which there is:

- An ownership/ investment interest; or
- A compensation agreement.

The Stark Law also prohibits the provider of the designated health service from submitting a claim for payment for a designated health service furnished pursuant to a prohibited referral.

Anti-kickback Statute ("AKS")

The AKS makes it a crime for anyone to knowingly and willfully solicit, offer, pay or receive any remuneration:

- In return for referring an individual to a person for the furnishing or arranging of any item or service for which payment may be made in whole or in part under a Federal health care program; or
- In return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under a Federal health care program.

If an arrangement satisfies a regulatory safe harbor, it is not treated as a violation.

Violators face criminal penalties and fines for acts that impact a Federal health care program's reimbursable services under this law.

Civil Monetary Penalties Law

The Federal law allows the government to seek certain civil penalties for violations involving fraud, waste and abuse. The U.S. Department of Health and Human Services Offices of Inspector General (“OIG”) may impose civil penalties for a number of reasons, including but not limited to:

- Knowledge of an overpayment and failing to report and return it;
- Making false claims;
- Paying to influence referrals
- Arranging for services or items furnished by an individual or entity excluded from a Federal health care program;
- Submitting a claim for services for services or items furnished by an individual or entity while excluded from a Federal health care program; or
- Failing to grant OIG timely access to records.

Penalties range from \$5,000-\$50,000 depending upon the type of violation and may vary based on the particulars of each violation (e.g., the number of false claims or the number of each prohibited relationship).

NYS False Claims Act

The NYS False Claims Act has similar provisions found in the FCA and makes it illegal to *knowingly*, among other things:

- Present or cause to be presented a false or fraudulent claim for payment or approval to NYS or a local government;
- Make, use, or cause to be made or used, a false record or statement material to a false or fraudulent claim to NYS or a local government;
- Conceal or avoid paying funds to NYS or a local government; or
- Conspire to commit a violation of various provisions of the NYS False Claims Act

NYS Social Service Law and NYS Penal Law

NYS Social Service Law and NYS Penal Law prohibit individuals from:

- Knowingly obtaining or making an attempt to obtain (or continue to receive) public assistance by way of making false statements or by means of other fraudulent acts or actions;
- Knowingly submitting a false claim or false information for the purpose of defrauding the Medicaid program or to receive a higher Medicaid compensation than entitled to under the law for services rendered; and
- Falsifying business records and offering a false instrument for filing.

Penalties for violations of these laws include but are not limited to:

- \$6,000-\$12,000 dollars per claim;
- Three times the amount of the damages which NYS or a local government sustains because of the act of that person;
- Being charged with a Class A misdemeanor; and
- Further criminal prosecution for larceny

Exclusion Authority Overview

Individuals and entities that have engaged in fraud, abuse or misconduct (including quality of care issues), can be excluded from participation in the Federal health care programs.

- Excluded individuals and entities can include providers, employees and Board Members
- Exclusion periods can vary in length from months to years can also be permanent.

Individuals or entities cannot be paid either directly or indirectly by a Federal health care program for any items or services furnishes, ordered or prescribed by an excluded individual or entity.

Community Access has an obligation to ensure that its workforce members are not among those who are excluded. CA monitors Federal and State government lists that include the names of excluded and entities.

Section 3

Mandated Reporting for
Vendors and
Subcontractors

Justice Center Reporting Requirements

- Vendors and subcontractors of CA programs that are under the Justice Center's jurisdiction are considered mandated reporters if they have regular and substantial contact with program participants. There are three general types of reportable incidents:
 - Abuse: Abuse can be physical, sexual, or psychological, as well as the deliberate misuse of restraint or obstruction of an investigation. Any sexual contact of any kind with a program participant is considered abuse.
 - Neglect: Neglect is the failure to provide supervision, or adequate food, clothing, shelter, health care, or access to education.
 - Significant Incident: A significant incident has the potential to result in harm to the health, safety or welfare of a person receiving services.
- Mandated reporters must report these types of incidents to the Justice Center Vulnerable Person's Central Registry(VPCR) immediately upon discovery.
 - Justice Center Toll Free VPCR 24 Hour Hotline: 1-855-373-2122

Section 4

Reporting Compliance
Issues

Reporting Compliance Issues or Concerns

Compliance issues or concerns can be reported via the following:

- Notifying the Quality Improvement Department
Call, write, email or visit the Compliance Officer or Chief Compliance Officer:
1 State Street, Suite 1015
New York, NY 10038
(212)780-1400 ext. 7911/7785
qi@communityaccess.org
- Reporting via the Confidential Misconduct Reporting Hotline
Anonymous reporting can be made via the Confidential Misconduct Reporting Line (646)722-9398.

Protection Against Retaliation

- Retaliation is a negative action taken by any person or entity against an individual as a result of an individual performing a protected activity (e.g. good faith reporting of compliance issues).
 - These actions include unwarranted discharges, demotions, suspensions, threats, harassment or discrimination of the individual.
- Community Access strictly prohibits intimidation or retaliation, in any form, against any individual, including program participants, who in good faith reports compliance violations and participates in the compliance program

Supporting CA's Compliance Efforts

- You can support CA's Compliance Department by:
 - Leading by example;
 - Supporting the efforts of CA's Quality Improvement Department;
 - Reporting issues or concerns and ask questions; and
 - Taking appropriate action when needed.

If you have any questions about the content, topics, information or situations posted in this training, please contact the Quality Improvement Department at (212) 780-1400 ext.7911 or qi@communityaccess.org