

ODA PRIMARY HEALTH CARE NETWORK, INC.

**Standards of Conduct,
Compliance Program Structure and Guidelines and
Overview of Federal and State False Claims Laws and
Whistleblower Protections**

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COMPLIANCE PROGRAM - REPORTING

All Personnel (as defined in the Standards of Conduct) of ODA Primary Health Care Network, Inc. must abide by the Compliance Program and are required to report suspected misconduct or possible violations of the Compliance Program to the Compliance Officer, another member of Senior Management (such as the Chief Executive Officer.), or to their supervisor. Personnel may also report issues to the Compliance Hotline or through use of the drop-boxes that are located throughout all ODA sites.

Personnel may report anonymously, if they so choose (by way of hotline or otherwise). The identity of the reporting Personnel will be kept confidential to the extent possible, consistent with the need to investigate the issues raised.

Retaliation or intimidation in any form against an individual who in good faith reports possible unethical or illegal conduct is strictly prohibited. Acts of retaliation or intimidation should be immediately reported to the Compliance Officer or to the Hotline and, if substantiated, the individuals responsible will be disciplined appropriately.

Name	Contact Information
<u>Compliance Officer</u> Leo C. Kreizman, Esq.	Ph: (718) 260-4600 ext 354 Email: L.Kreizman@odahealth.org
<u>Compliance Hotline</u>	Ph: 718-260-4639
<u>Compliance Department</u>	Ph: (718) 260-4639 Email: compliance@odahealth.org
<u>Chief Executive Officer</u> Joseph Deutsch	Ph: 718-260-4600 ext. 301 Email: j.deutsch@odahealth.org

Section One – Introduction

1.01 Overview

- a. ODA Primary Health Care Network, Inc. (“ODA” or “the Health Center”) is organized and operated exclusively for charitable purposes under the New York State Nonprofit Corporations Law and within the meaning of Section 501(c)(3) of the Internal Revenue Code (“Code”), as amended.
- b. ODA and its Board members, officers, employees, contractors, and agents (“Personnel”), have a responsibility to the Health Center’s patients, Federal and State governments, other Health Center funders, and the communities served by the Health Center to conduct themselves prudently, responsibly, in furtherance of, and consistent with, ODA’s charitable purposes and non-profit, tax-exempt status, and in the best interests of the Health Center’s patients.
- c. To promote and help ensure appropriate conduct, the primary purpose of these Standards of Conduct is to provide guidance to the Health Center’s Personnel to assist Personnel in providing high quality services to our patients pursuant to the highest ethical, business and legal standards.
- d. These Standards of Conduct are also intended to provide safeguards to prevent Personnel from:
 - i. Using their position for purposes that are, or give the appearance of being, motivated by a desire for personal, private, financial, or other gain for themselves or others, such as those with whom they have family, business or other ties; and
 - ii. Violating their fiduciary and/or contractual duties, if any, to ODA by inappropriately disclosing confidential information about the Health Center.
- e. These Standards of Conduct are intended to be consistent with the Health Center’s Bylaws and applicable Federal, State, and local law. In conducting any and all activities, Board members (including non-voting members of the Board), other individuals who may be authorized to be present at Board meetings, officers, employees, contractors, and agents of the Health Center must comply with these Standards of Conduct.
- f. These standards of conduct will also be given to contractors/consultants of ODA as an educational tool.

1.02 General Responsibilities

- a. Because of the importance of the Compliance Program, we require that all Personnel cooperate fully with Compliance Officer and with the requirements of the Program. All Personnel are further required to review and be familiar with the Standards of Conduct and the Structure and Guidelines and sign the Acknowledgement Page that follows.
- b. The Board of Directors. The Board of Directors of ODA recognizes the paramount importance of maintaining the Health Center’s reputation for integrity that includes, but is not limited to, assuring compliance with applicable Federal, State, and local laws and regulations, as well as

fulfilling contractual obligations. The Standards of Conduct, the Compliance Program Structure and Guidelines, and related compliance policies have all been formalized in writing and adopted by the Board.

- c. *Individual Responsibility.* Every Board member, officer, employee, contractor, or agent of the Health Center is responsible for ensuring that his or her conduct is consistent with these Standards of Conduct; with the requirements of federal and state law; with ODA's policies and procedures; and with generally accepted standards of professionalism, courtesy, and respect. Furthermore, the Center's Board members, officers, and employees in supervisory positions must assume, and are charged with, responsibility for ensuring that the conduct of everyone they supervise complies with these Standards of Conduct.

1.03. Violations of Standards of Conduct

- a. *Employees.* Employees should promptly report concerns regarding compliance with these Standards of Conduct. Such reports may be made confidentially, and even anonymously. ODA will protect the confidence and anonymity of the person reporting to the greatest extent possible, consistent with the need to investigate the issue even if the person reporting does not request such confidential treatment; however, ODA cannot guarantee anonymity. Raising such concerns is a service to ODA and will not jeopardize the terms and conditions of employment of the reporting individual. All employees must cooperate fully in the investigation of any alleged misconduct. Any employee who makes intentionally false accusations regarding a compliance concern is subject to disciplinary action, including, but not limited to, suspension or termination from employment, in addition to legal penalties that may apply.
- b. *Others.* Other individuals should promptly report suspected violations of Standards of Conduct to the Chief Executive Officer or Compliance Officer. If an individual has reason to believe that the Chief Executive Officer has violated the Standards of Conduct, notice should be given to the Chair of the Board of Directors or to the Compliance Officer, who will report to the Chair. All Personnel must cooperate fully in the investigation of any alleged misconduct.

1.04 Consequences of Violations

All disciplinary actions shall be fairly and firmly enforced.

- a. *Board Members and Officers.* Board members and officers who violate these standards may, depending on the severity of the violation, be subject to admonishment or removal from the Board, in addition to legal penalties that may apply. ODA reserves the right to pursue whatever legal remedies may be available to address violations.
- b. *Employees, Contractors, and Agents.* Employees, contractors, or agents who violate these standards may, depending on the severity of the violation, be subject to oral admonishment, written reprimand, reassignment, demotion, suspension or termination, in addition to legal penalties that may apply.

Section Two – Standards of Conduct

2.01 General Standards

- a. Personnel must be honest and lawful in all of their business dealings and avoid doing anything that could create even the appearance of impropriety.
- b. Personnel must comply with the Standards of Conduct; report any action they think may be possibly unlawful, inappropriate or in violation of the Code or any compliance policy; cooperate with compliance inquiries and investigations by the Compliance Officer; and work to correct any improper practices that are identified.
- c. No acts of retaliation or intimidation for good faith reporting of any suspected violation will be tolerated.

2.02 Standards Relating to Quality of Care

- a. ODA is committed to providing the highest quality medical services to our clients in accordance with all applicable laws, rules and regulations.
- b. All professional staff employed or engaged by Health Center will be properly licensed pursuant to applicable state requirements, and ODA will take steps on a regular bases to ensure such compliance.
- c. In addition to the general credentialing process, ODA will screen all Personnel to ensure that they are not included on the Office of Inspector General or Office of Medicaid Inspector General’s list of excluded individuals, or the General Services Administration’s list of parties excluded from federal programs.
- d. ODA has strict standards in place regarding quality of care. Senior management will be responsible for overseeing quality of care issues. ODA has established processes by which quality assurance reviews are conducted, issues are addressed, and corrective actions are implemented. In addition, ODA has established protocols for reviewing complaints from patients and third parties and addressing issues which may arise.

2.03 Standards Related to Coding, Billing, and Documenting Services

- a. The knowing submission of false claims and statements to obtain payment from government sponsored health plans, such as Medicare and Medicaid, is punishable by criminal, civil and/or administrative penalties, including fines per false claim and exclusion from participating in the Medicare and Medicaid Programs. An overview of applicable Federal and State False Claims laws is contained in Sections Four and Five of this document. An overview of the Whistleblower Protections afforded by these laws can be found in Section Six.
- b. No Personnel may ever misrepresent charges or services to or on behalf of the government, a patient, or payer. False statements, intentional omissions, or deliberate and reckless misstatements to government agencies or other payers will expose the Personnel to disciplinary action. Personnel will not knowingly engage in any form of up-coding of any service in

violation of any law, rule, or regulation. Personnel involved in such activities are subject to termination of employment or contract, and potential criminal and civil liability.

- c. Although the billing function is conducted by an outside contracted firm, ODA remains responsible for the accuracy and truthfulness of the underlying documentation and other paperwork that supports any claim submission. Thus, all documentation generated by the Health Center (e.g., payer information, progress notes, procedure or diagnosis coding, etc.) must be complete, accurate and truthful and be based on the actual services provided. It is the responsibility of Personnel involved in the documentation and billing process to:
 - Be cooperative and promptly respond to any requests from the billing firm for clarification of documentation that supports billing.
 - Respond promptly to situations that result in inaccurate billing.
 - Adhere to regulatory and payer requirements regarding documentation, billing, coding, and claim submission.
- d. ODA will review the services provided by the contracted billing firm to ascertain if the billing firm: (i) is enrolled in Medicaid as a service bureau and (ii) has its own compliance program that meets ODA's requirements. ODA will ensure that the billing firm is aware of ODA's compliance program. In contracting with the billing firm, ODA will ensure that the contract terms include the requirements that the billing firm (i) be knowledgeable about ODA's compliance program and (ii) implement its own compliance program if such firm meets the NYS criteria to have such a program.
- e. ODA does not knowingly retain any payments that it is not entitled to keep and will promptly refund any overpayments identified. ODA will ensure that reports of the status of any credit balances of refunds owing to Medicare and other third-party payers are generated on a regular basis. Such refunds must then be made to the appropriate payer in a timely and reasonable manner. It is our policy to not retain any funds which are received as a result of overpayments and to report and refund any overpayments within 60 days from the date the overpayment was identified.

2.04 Standards Related to Referrals

- a. In accordance with federal and state law, ODA does not pay or receive payment from physicians, providers, or anyone else, directly or indirectly, for referrals.
- b. All marketing activities and advertising by personnel must be based on the merits of the services provided by ODA and not on any promise, express or implied, of remuneration for any referrals.

2.05 Standards Related to Business Activities.

- a. Board members, officers, employees, contractors, and agents of ODA must strive to make decisions fairly and objectively with the best interests of ODA in mind. As ODA is a U.S. Department of Health and Human Services ("DHHS") grantee, these Standards of Conduct are also necessary to comply with DHHS regulations found at 45 CFR §74.42.

- b. ODA will forgo any business transaction or opportunity that can only be obtained by improper or illegal means, and will not make any unethical or illegal payments to induce the use of our services.
- c. No Personnel will engage, either directly or indirectly, in any corrupt business practice intended to influence the manner in which ODA performs its services, accepts referrals or otherwise engages in its business practices.
- d. All business records, including, but not limited to financial records, cost reporting, time records and billing documents, must be accurate, truthful and complete, with no material omissions.
- e. Personnel may not accept gifts and hospitality from vendors or contractors doing business with ODA if doing so would induce the Personnel to act in his or her own benefit (over ODA's) or even create an appearance that the gift or hospitality is being provided to induce the Personnel to act in his or her own benefit. Cash or cash equivalents (such as gift certificates) may not be given or accepted under any circumstances.
 - No Board member, officer, employee, contractor, or agent of ODA may solicit or accept gifts, gratuities, favors, or anything of value from contractors or potential contractors of ODA, or from parties or potential parties to sub-agreements (e.g., subcontracts and sub-grants).
 - A "gift" means anything offered directly by or on behalf of a contractor or potential contractor. Gifts include (but are not limited to): personal gifts, such as sporting goods, household furnishings and liquor, social entertainment or tickets to sporting events, personal loans or privileges to obtain discounted merchandise, and the like.
 - Promotional materials of little or nominal value such as pens, calendars, mugs, and other items intended for wide distribution and not easily resold are not considered gifts for the purposes of this Subsection. Food and drinks, except bottles of wine/alcohol, are not considered gifts for the purpose of this Subsection.
 - Every ODA Board member, officer, employee, contractor, and agent will decline or return any gift and notify the Chief Executive Officer of such gift.
 - Notwithstanding the "Consequences of Violations" provisions above, ODA will immediately dismiss any employee, remove any officer or Board member, and terminate the contract of any contractor/agent found to have offered or accepted a bribe to secure funding or other benefits from or for ODA.

2.06 Procurement Standards

- a. ODA has adopted a Procurement Policy that governs ODA's procurements. As stated in the Procurement Policy, it is the policy of ODA to conduct all procurement transactions in a manner to provide, to the maximum extent, practical, open, and free competition. Other important procurement considerations include the following:

- b. ODA will be sensitive to, and seek to avoid, organizational conflicts of interest or non-competitive practices among contractors. Consultants who want to bid for a contract from ODA are prohibited from drafting the contract's specifications, requests for proposals, and the like.
- c. Awards will be made to the bidder whose bid is responsive to the solicitation and most advantageous to ODA, in terms of price, quality, and other factors. ODA retains the right to reject any and all bids or offers when it is in ODA's interest to do so.

2.07 Confidential Information

- a. In compliance with federal and state privacy laws, all Personnel will keep patient information confidential, except when disclosure is authorized by the patient or permitted by law. Personnel must adhere to all established confidentiality and privacy policies, procedures and laws, including the Health Insurance Portability and Accountability Act (HIPAA).
- b. Board members, officers, employees, contractors, agents, and other individuals may acquire confidential or proprietary information by virtue of their affiliation with ODA or by virtue of attending a Board or Committee meeting. Confidential or proprietary may not be: (1) disclosed outside of ODA without appropriate authorization from the Board (for Board members, other individuals who may be authorized to be present at Board meetings, and officers) or from the Chief Executive Officer (for employees, contractors, or agents); or (2) used for personal gain or for the benefit of a third party.
- c. In addition, Board members, officers, employees, contractors, agents, and other individuals who may acquire confidential or proprietary information by virtue of their affiliation with ODA or by virtue of attending a Board or Committee meeting are expected to exercise reasonable care to avoid the inadvertent disclosure of confidential information and will be bound by (and required to comply with) the confidentiality provisions contained in agreements executed between ODA and other organizations. Board members, officers, employees, contractors, agents, and other individuals who may acquire confidential or proprietary information by virtue of their affiliation with ODA shall be required to maintain the confidentiality of ODA's information, patient health data, and risk management, quality improvement, and human resources activities, consistent with this Confidentiality Policy indefinitely after their term of Board membership, office, employment, contract, or other affiliation with ODA ends.
- d. The term "confidential or proprietary information" shall mean any and all information (whether written, oral, or contained on audio tapes, video tapes or computer diskettes), relating to the business, operation, and/or financial condition of ODA. All information communicated at executive sessions or other closed sessions of the Board of Directors is confidential and proprietary information.
- e. Every Board member, officer, employee, contractor, agent, or other individual who may acquire confidential or proprietary information by virtue of their affiliation with ODA or by virtue of attending a Board or Committee meeting shall be required to sign a Confidentiality Agreement, whereby such individual expressly agrees to comply with ODA's confidentiality policies set forth herein. The Human Resources Department will collect these agreements from all employees prior to hiring. The Finance Department will collect these agreements from all vendors prior to purchasing. The Compliance Department will collect these agreements from all Board members prior upon their election to the Board.

2.08 Political Activities and Lobbying

- a. No employee, contractor, or agent to ODA may engage in political campaign activities (typically involving election for public office) while at work during business hours. No Board member, officer, employee, contractor, or agent may use ODA's name, facility, or any resources in connection with political campaign activities.
- b. Board members, officers, employees, contractors, and agents may not engage in conduct on behalf of ODA that indicates support for any political party or candidate. No Board member, officer, employee, contractor, or agent will, in any manner, solicit financial assistance or subscription for any political party, candidate, fund, publication, or for any other political purpose from ODA employees in the workplace or otherwise in an employment-related setting.
- c. No Federal grant or related funds may be used to support the costs of lobbying activities as defined variously in OMB Circular A-122, DHHS rules implementing the Byrd Amendment and DHHS appropriations riders. Lobbying is generally defined as a communication (written or oral) that is an attempt to influence (for or against) specific legislation including appropriations. No lobbying activities will be conducted by Board members, officers, employees, contractors, or agents, on behalf of ODA, without the prior written approval of the Board of Directors or the Chief Executive Officer, and only in full compliance with the requirements of applicable laws and regulations.

2.09 Standards Related to Mandatory Reporting

- a. In certain circumstances (e.g., after an internal investigation confirms possible fraud, waste, abuse or inappropriate claims), and with the advice and assistance of legal counsel, ODA will make use of the appropriate disclosure or refund process.
- b. If applicable, ODA will report compliance issues to the NYS Department of Health or the NYS Office of Medicaid Inspector General.
- c. ODA will ensure that all incidents and events that are required to be reported under federal and state mandatory reporting laws, rules and regulations are reported in a timely manner.

2.10 Honest Dealing with Government Officials

- a. Individuals affiliated with the Health Center will be cooperative and truthful in their dealings with any governmental inquiries or requests, including audits, surveys, and certifications reviews.
- b. Personnel may speak voluntarily with government agents, and ODA will not attempt to obstruct such communication. It is recommended, however, that Personnel contact the Compliance Officer before speaking with any government agents.
- c. Personnel will promptly report any governmental inquiries or requests, including audits, surveys, and certifications reviews to the Health Center's Chief Executive Officer, Compliance Officer or other member of senior management.
- d. Personnel must receive authorization from the Compliance Officer before responding to any request to disclose ODA's documents to any outside party.

- e. It is ODA's policy to comply with the law and cooperate with legitimate governmental investigations or inquiries. All responses for information must be accurate and complete. Any action by Personnel to destroy, alter, or change any ODA records in response to a request for such records is prohibited and shall subject the individual to immediate termination of employment or contract and possible criminal prosecution.

Section Three-Compliance Program Structure and Guidelines

The following eight elements comprise ODA's Compliance Program's Structure and Guidelines. Each element governs a different and important aspect of the Compliance Program.

3.01 Element 1: Written Policies and Procedures

The Standards of Conduct, the Compliance Program Structure and Guidelines, and related compliance policies have all been formalized in writing and adopted by ODA'S Board of Directors. The Compliance Officer and Compliance Committee will meet annually to discuss any changes, if necessary, to these or any other Compliance Program documents and the Board will approve the finalized versions before the annual OMIG compliance program certification.

3.02 Element 2: Designation of Compliance Officer

ODA has designated a Compliance Officer who maintains day-to-day responsibility for the Compliance Program. The Compliance Officer is responsible for receiving and responding to all reports, complaints, and questions about compliance issues. The Compliance Officer reports directly to the Health Center's CEO and to the Board. The Compliance Officer is responsible for investigating instances of potential legal and ethical violations (and violations of the Standards of Conduct) and developing recommendations with respect to the response to confirmed violations.

The Compliance Officer chairs the Compliance Committee, which meets quarterly or more frequently as necessary, regarding compliance issues that may arise and any corrective action, investigation or follow-up that may be appropriate. The Compliance Committee assists the Compliance Officer in meeting his or her responsibilities.

3.03 Element 3: Training and Education

The Compliance Officer will ensure that all Personnel receive compliance training, and will develop a schedule of occasional training on compliance issues, as necessary, for new and existing Personnel. Such training will include:

- (1) Training for all new newly hired employees, including executives, and for newly appointed Board members as part of the orientation process.
- (2) An annual review for all Personnel of the requirements of the Compliance Program, including any changes which have been adopted.
- (3) Periodic training for specific Personnel, as necessary.

3.04 Element 4: Communication Lines to the Compliance Officer

- a. All Personnel are required to report suspected misconduct or possible violations of the Code of Conduct to the Compliance Officer. Personnel may also report issues to the Compliance Hotline. Personnel may report anonymously, if they so choose (by way of the Hotline or

otherwise). The identity of any reporting Personnel will be kept confidential to the extent possible, consistent with the need to investigate the issues raised.

- b. The Center has implemented a Compliance “Hotline” to allow for anonymous and confidential reporting. Posters with the Hotline number will be posted in appropriate areas, including in non-staff areas.
- c. The Center recognizes that all persons associated with ODA should have access to lines of communication to the Compliance Department. Such persons will also be informed of how they may communicate with the Compliance Department or the Compliance Hotline.

3.05 Element 5: Disciplinary Action

All Personnel will be subject to disciplinary action if they fail to comply with any laws, regulations, or any aspect of the Standards of Conduct and/or the Compliance Program. This includes disciplinary actions for:

- (1) failure to report suspected problems;
- (2) participating in non-compliant behavior;
- (3) encouraging, directing, facilitating, permitting non-compliant behavior; or
- (4) failing to detect and report a compliance violation by a violator’s supervisor(s), if such failure reflects inadequate supervision or lack of oversight.

Such disciplinary actions shall be fairly and firmly enforced. The types of discipline imposed will be commensurate with the severity of the violation, ranging from verbal or written warnings to termination of employment or contract if necessary.

3.06 Element 6: Identification of Compliance Risk Areas and Non-Compliance

- a. Tracking New Developments. The Compliance Officer will ensure that all relevant publications issued by government or third-party payers regarding compliance rules or protocols are reviewed and appropriately implemented. Through this process, compliance risk areas specific to ODA will be identified and incorporated into the Annual Work plan, or a focused audit, as appropriate. In addition, the Compliance Officer will monitor the Compliance Hotline and any other reports of Compliance issues or violations that might be raised. As appropriate, the Compliance Officer will raise issues with the Compliance Committee and/or the Board of Directors.
- b. Compliance Assurance Reviews. ODA has a process for the routine identification and assessment of compliance risk areas. If any review indicates that possible compliance issues may exist, the Compliance Officer will respond in accordance with Element 7, outlined below.
- c. Risk Assessment and Annual Work Plan. The Compliance Officer and the Compliance Committee will formulate an annual Compliance Work Plan based on developments arising from internal reviews and issues and external areas of compliance concern. The Work Plan will be approved by the Board of Directors.

3.07 Element 7: Responding to Compliance Issues

- a. *Investigations.* All compliance issues, however raised, must be brought to the attention of the Compliance Officer or a Compliance Coordinator (who reports to the Compliance Officer). The Compliance Officer will oversee or conduct an inquiry into the issue, using outside counsel or consultants as necessary. All Personnel are required to cooperate in such investigations.
- b. *Corrective Action and Responses to Suspected Violations.* Corrective action may include: conducting training and re-education; revising or creating appropriate forms; modifying or creating new policies and procedures; conducting internal reviews, audits or follow-up audits; imposing discipline, as appropriate; and making a voluntary disclosure or refund to appropriate governmental agencies.

3.08 Element 8: Policy of Non-Intimidation and Non-Retaliation

- a. *Intimidation and Retaliation Are Prohibited.* All Personnel are expected to participate in and comply with this Compliance Program, including the reporting of any violation or compliance issue. Retaliation or intimidation in any form against an individual who in good faith reports possible unethical or illegal conduct or otherwise participates in the Compliance Program is strictly prohibited and is itself a serious violation of the Code of Conduct. Acts of retaliation or intimidation should be immediately reported to the Compliance Officer and, if substantiated, will be disciplined appropriately.

Section Four – Federal False Claims Laws

4.01 The Federal False Claims Act

a. The Federal False Claims Act - Overview

The Federal False Claims Act (“FCA”) (31 USC §§3729-3733) provides, in pertinent part, as follows. Any person who :

- i. knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;
- ii. knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;
- iii. conspires to commit a violation of any of the subparagraphs listed here;
- iv. has possession, custody, or control of property or money used, or to be used, by the Government and knowingly delivers, or causes to be delivered, less than all of that money or property;
- v. is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;
- vi. knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge property; or
- vii. 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 Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government.

is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461);¹ plus 3 times the amount of damages which the Government sustains because of the act of that person.

b. Reduced Damages. A person’s liability may be reduced if the court finds that:

- i. the person committing the violation of this subsection furnished officials of the United States responsible for investigating false claims violations with all information known to such

¹ Although the statutory provisions of the Federal False Claims Act authorizes a range of penalties of from between \$5,000 and \$10,000, those amounts have been adjusted for inflation and increased by regulation to not less than \$10,781 and not more than \$21,563 for penalties assessed after August 1, 2016, whose associated violations occurred after November 2, 2015. *See 28 C.F.R. §85.5.*

person about the violation within 30 days after the date on which the defendant first obtained the information;

- ii. such person fully cooperated with any Government investigation of such violation; and
- iii. at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation, the court may assess not less than 2 times the amount of damages which the Government sustains because of the act of that person.

c. Costs of Civil Actions. A person violating this Act shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages.

d. Definitions

i. The terms “knowing” and “knowingly,” mean that a person, with respect to information:

- has actual knowledge of the information;
- acts in deliberate ignorance of the truth or falsity of the information; or
- acts in reckless disregard of the truth or falsity of the information; and
- require no proof of specific intent to defraud.

ii. The term “claim” means any request or demand, whether under a contract or otherwise, for money or property and whether or not the United States has title to the money or property, that:

- is presented to an officer, employee, or agent of the United States; or
- is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the Government's behalf or to advance a Government program or interest, and if the United States Government:
 - provides or has provided any portion of the money or property requested or demanded; or
 - will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded; and
 - does not include requests or demands for money or property that the Government has paid to an individual as compensation for Federal employment or as an income subsidy with no restrictions on that individual's use of the money or property;

iii. The term “obligation” means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment; and

iv. The term “material” means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

e. Exclusion

This section does not apply to claims, records, or statements made under the Internal Revenue Code of 1986.

f. Conclusion

While the False Claims Act imposes liability only when the claimant acts “knowingly,” it does not require that the person submitting the claim have actual knowledge that the claim is false. A person who acts in reckless disregard or in deliberate ignorance of the truth or falsity of the information, also can be found liable under the Act. 31 U.S.C. 3729(b).

In sum, the False Claims Act imposes liability on any person who submits a claim to the federal government, or submits a claim to entities administering government funds, that he or she knows (or should know) is false. An example may be a physician who submits a bill to Medicare for medical services she knows she has not provided. The False Claims Act also imposes liability on an individual who may knowingly submit a false record in order to obtain payment from the government. An example of this may include a government contractor who submits records that he knows (or should know) are false and that indicate compliance with certain contractual or regulatory requirements. The third area of liability includes those instances in which someone may obtain money from the federal government to which he may not be entitled, and then uses false statements or records in order to retain the money. An example of this so-called “reverse false claim” may include a hospital which obtains interim payments from Medicare or Medicaid throughout the year, and then knowingly files a false cost report at the end of the year in order to avoid making a refund to the Medicare or Medicaid program.

In addition to its substantive provisions, the FCA provides that private parties may bring an action on behalf of the United States. 31 U.S.C. 3730 (b). These private parties, known as “qui tam relators,” may share in a percentage of the proceeds from an FCA action or settlement. Section 3730(d)(1) of the FCA provides, with some exceptions, that a qui tam relator, when the Government has intervened in the lawsuit, shall receive at least 15 percent but not more than 25 percent of the proceeds of the FCA action depending upon the extent to which the relator substantially contributed to the prosecution of the action. When the Government does not intervene, section 3730(d)(2) provides that the relator shall receive an amount that the court decides is reasonable and shall be not less than 25 percent and not more than 30 percent.

4.02 Administrative Remedies for False Claims (31 USC Chapter 38. §§ 3801 – 3812)

This statute allows for administrative recoveries by federal agencies. If a person submits a claim that the person knows is false or contains false information, or omits material information, the agency receiving the claim may impose a penalty of up to \$5,000 for each claim.² The agency may also recover twice the amount of the claim.

² Although the statutory provisions of the Program Fraud Civil Remedies Act authorizes a penalty up to \$5,000, that amount has been adjusted for inflation and increased by regulation to not more than \$10,781 for penalties assessed after August 1, 2016, whose associated violations occurred after November 2, 2015. See 28 C.F.R. §85.5.

Unlike the False Claims Act, a violation of this law occurs when a false claim is submitted rather than 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 prosecution in the federal court system.

Section Five – State False Claims Laws

5.01 Overview

New York State False Claim Laws fall under the jurisdiction of both New York’s civil and administrative laws as well as its criminal laws. Some apply to recipient false claims and some apply to provider false claims. The majority of these statutes are specific to healthcare or Medicaid. Yet, some of the “common law” crimes apply to areas of interaction with the government and so are applicable to health care fraud and will be listed here.

5.02 Civil and Administrative Laws

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

The New York False Claims Act is similar to the Federal False Claims Act. It imposes penalties and fines upon individuals and entities who knowingly file false or fraudulent claims for payment from any state or local government, including health care programs such as Medicaid. It also has a provision regarding reverse false claims similar to the federal FCA such that a person or entity will be liable in those instances in which the person obtains money from a state or local government to which he may not be entitled, and then uses false statements or records in order to retain the money.

The penalty for filing a false claim is six to twelve thousand dollars per claim plus three times the amount of the damages which the state or local government sustains because of the act of that person. In addition, a person who violates this act is liable for costs, including attorneys’ fees, of a civil action brought to recover any such penalty.

The Act allows private individuals to file lawsuits in state court, just as if they were state or local government parties, subject to various possible limitations imposed by the NYS Attorney General or a local government. If the suit eventually concludes with payments back to the government, the person who started the case can recover twenty-five to thirty percent of the proceeds if the government did not participate in the suit, or fifteen to twenty-five percent if the government did participate in the suit.

b. Social Services Law, Section 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 ten thousand dollars per violation. If repeat violations occur within five years, a penalty of up to thirty thousand dollars per violation may be imposed if the repeat violations involve more serious violations of Medicaid rules billing for services not rendered, or providing excessive services.

c. Social Services Law, Section 145-c - Sanctions

If any person applies for or receives public assistance, including Medicaid, by intentionally making a false or misleading statement, or intending to do so, the needs of the individual or that of his family shall not be taken into account for the purpose of determining his or her needs or that of his family for six months if a first offense, for twelve months if a second offense (or if benefits wrongfully received are at least one thousand dollars but not more than three thousand nine hundred dollars), for eighteen months if a third offense (or if benefits wrongfully received are in excess of three thousand nine hundred dollars), and five years for any subsequent occasion of any such offense.

5.03 Criminal Laws

a. Social Services Law, Section 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.

b. Social Services Law, Section 366-b - Penalties for Fraudulent Practices

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.

Any person who, with intent to defraud, presents for payment a false or fraudulent claim for furnishing services, knowingly submits false information to obtain greater Medicaid compensation, or knowingly submits false information in order to obtain authorization to provide items or services is guilty of a class A misdemeanor.

c. 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

- i. Fourth degree grand larceny involves property valued over \$1,000. It is a class E felony.
- ii. Third degree grand larceny involves property valued over \$3,000. It is a class D felony.
- iii. Second degree grand larceny involves property valued over \$50,000. It is a class C felony.
- iv. First degree grand larceny involves property valued over \$1 million. It is a class B felony.

d. Penal Law Article 175 - False Written Statements

The four crimes in this Article relate to filing false information or claims and have been applied in Medicaid fraud prosecutions:

- i. §175.05 - Falsifying business records involves entering false information, omitting material information or altering an enterprise's business records with the intent to defraud. It is a class A misdemeanor.

- ii. §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.
- iii. §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.
- iv. §175.35 - Offering a false instrument for filing in the first degree includes the elements of the second degree offense and must include an intent to defraud the state or a political subdivision. It is a class E felony.

e. Penal Law Article 176 - Insurance Fraud

This law applies to claims for insurance payments, including Medicaid or other health insurance, and contains six crimes:

- i. Insurance fraud in the 5th degree involves intentionally filing a health insurance claim knowing that it is false. It is a class A misdemeanor.
- ii. Insurance fraud in the 4th degree is filing a false insurance claim for over \$1,000. It is a class E felony.
- iii. Insurance fraud in the 3rd degree is filing a false insurance claim for over \$3,000. It is a class D felony.
- iv. Insurance fraud in the 2nd degree is filing a false insurance claim for over \$50,000. It is a class C felony.
- v. Insurance fraud in the 1st degree is filing a false insurance claim for over \$1 million. It is a class B felony.
- vi. Aggravated insurance fraud is committing insurance fraud more than once. It is a class D felony.

f. Penal Law Article 177 - Health Care Fraud

This statute, enacted in 2006, applies to health care fraud crimes. It was designed to address the specific conduct by health care providers who defraud the system including any publicly or privately funded health insurance or managed care plan or contract, under which any health care item or service is provided. Medicaid is considered to be a single health plan under this statute.

This law primarily applies to claims by providers for insurance payment, including Medicaid payment, and it includes six crimes:

- i. Health care fraud in the 5th degree – a person is guilty of this crime when, with intent to defraud a health plan, he or she knowingly and willfully provides materially false information or omits material information for the purpose of requesting payment from a health plan. This is a class A misdemeanor.

- ii. Health care fraud in the 4th degree - a person is guilty of this crime upon filing such false claims on more than one occasion and annually receives more than three thousand dollars. This is a class E felony.
- iii. Health care fraud in the 3rd degree - a person is guilty of this crime upon filing such false claims on more than one occasion and annually receiving over ten thousand dollars. This is a class D felony.
- iv. Health care fraud in the 2nd degree - a person is guilty of this crime upon filing such false claims on more than one occasion and annually receiving over fifty thousand dollars. This is a class C felony.
- v. Health care fraud in the 1st degree - a person is guilty of this crime upon filing such false claims on more than one occasion and annually receiving over one million dollars. This is a class B felony.

Section Six – Whistleblower Protection

6.01 The Federal False Claims Act

The Federal False Claims Act (31 U.S.C. §3730(h)) provides protection to qui tam relators (individuals who commence a False Claims action) who are discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of their employment as a result of their furtherance of an action under the FCA 31 U.S.C. 3730(h). Remedies include reinstatement with comparable seniority as the qui tam relator would have had but for the discrimination, two times the amount of any back pay, interest on any back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

6.02 The New York State False Claim Act (State Finance Law §191)

The New York State False Claim Act also provides protection to qui tam relators (individuals who commence a False Claims action) who are discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of their employment as a result of their furtherance of an action under the Act. Remedies include reinstatement with comparable seniority as the qui tam relator would have had but for the discrimination, two times the amount of any back pay, interest on any back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

6.03 Pilot program for Enhancement of Contractor Protection From Reprisal for Disclosure of Certain Information (41 USC § 4712)

- a. An employee of a contractor, subcontractor, or grantee may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described below information that the employee reasonably believes is evidence of:
 - i. Gross mismanagement of a federal contract or grant;
 - ii. A gross waste of federal funds;
 - iii. An abuse of authority relating to a federal contract or grant;
 - iv. A substantial and specific danger to public health or safety; or
 - v. A violation of law, rule, or regulation related to a federal contract or grant (including the competition for, or negotiation of, a contract or grant).
- b. This regulation applies to disclosures made to the following persons or bodies:
 - i. A Member of Congress or a representative of a committee of Congress.

- ii. An Inspector General.
 - iii. The Government Accountability Office.
 - iv. A Federal employee responsible for contract or grant oversight or management at the relevant agency.
 - v. An authorized official of the Department of Justice or other law enforcement agency.
 - vi. A court or grand jury. (A) A Member of Congress or a representative of a committee of Congress.
 - vii. An Inspector General.
 - viii. The Government Accountability Office.
 - ix. A Federal employee responsible for contract or grant oversight or management at the relevant agency.
 - x. An authorized official of the Department of Justice or other law enforcement agency.
 - xi. A court or grand jury.
 - xii. Any management official or other employee of the grantee (ODA) who has the responsibility to investigate, discover, or address misconduct.
- c. Submission of complaint. A person who believes that he/she has been subjected to a reprisal may submit a complaint to the Inspector General of the executive agency involved. The employee will have all rights and remedies afforded by Federal law.

6.04 New York State Labor Law, Section 740

An employer may not take any retaliatory action against an employee if the employee discloses information about the employer's policies, practices or activities to a regulatory, law enforcement or other similar agency or public official. Protected disclosures are those that assert that the employer is in violation of a law that creates a substantial and specific danger to the public health and safety or which constitutes health care fraud under Penal Law §177 (knowingly filing, with intent to defraud, a claim for payment that intentionally has false information or omissions). The employee's disclosure is protected only if the employee first brought up the matter with a supervisor and gave the employer a reasonable opportunity to correct the alleged violation. If an employer takes a retaliatory action against the employee, the employee may sue in state court for reinstatement to the same, or an equivalent position, any lost back wages and benefits and attorneys' fees. If the employer is a health provider and the court finds that the employer's retaliatory action was in bad faith, it may impose a civil penalty of \$10,000 on the employer.

6.05 New York State Labor Law, Section 741

A health care employer may not take any retaliatory action against an employee if the employee discloses certain information about the employer's policies, practices or activities to a regulatory,

law enforcement or other similar agency or public official. Protected disclosures are those that assert that, in good faith, the employee believes constitute improper quality of patient care. The employee's disclosure is protected only if the employee first brought up the matter with a supervisor and gave the employer a reasonable opportunity to correct the alleged violation, unless the danger is imminent to the public or patient and the employee believes in good faith that reporting to a supervisor would not result in corrective action. If an employer takes a retaliatory action against the employee, the employee may sue in state court for reinstatement to the same, or an equivalent position, any lost back wages and benefits and attorneys' fees. If the employer is a health provider and the court finds that the employer's retaliatory action was in bad faith, it may impose a civil penalty of \$10,000 on the employer.

Section Seven - Whistleblower, Non-Intimidation and Non-Retaliation Policy

POLICY

Pursuant to its Compliance Program, ODA Primary Health Care Network (“ODA”) is committed to maintaining compliance with all laws and regulations, including those governing quality of care, documentation, coding, billing and its relationships with other providers.

In furtherance of the Compliance Program and the requirements of Section 715-b of the New York Not-for-Profit Corporations Law,³ the purpose of this Policy is to ensure that all personnel understand ODA’s commitment to prohibiting intimidation, retaliation, harassment, discrimination or other retaliation for “good faith participation in the Compliance Program” (as defined below). Intimidation and retaliatory action in any form by any individual associated with ODA is strictly prohibited and is itself a serious violation of the Code of Conduct and this Policy. Prohibited retaliation includes, but is not limited to, any adverse employment action and any other negative treatment, including intimidation that results from good-faith participation in the Compliance Program.

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

PROCEDURES

7.01 Oversight Of This Policy

The adoption and implementation of, and compliance with, this Policy shall be overseen by the Board of Directors Compliance Subcommittee. The Board of Directors Compliance Subcommittee may, in its discretion, authorize certain functions relating to the implementation of, and compliance with, this Policy to be performed by one or more ODA employees, officers or directors but the Board of Directors Compliance Subcommittee will, at all times, retain overall responsibility for all aspects of the oversight of this Policy.

7.02 Participation In The Compliance Program

“Good faith participation in the Compliance Program” includes, but is not limited to:

- reporting actual or potential issues or concerns, including but not limited to, any action or suspected action taken by or within ODA that is illegal, fraudulent or in violation of any adopted ODA policy;
- cooperating with or participating in the investigation of such matters;

³ As enacted by Section 75 of the Non-Profit Revitalization Act of 2013.

- assisting with or participating in self-evaluations, audits, and/or implementation of remedial actions; or
- reporting to appropriate regulatory officials as provided in New York State Labor Law §§ 740 and 741.⁴

7.03 Reporting and Confidentiality

As required by ODA’s Compliance Program, all personnel are expected to report suspected misconduct or possible violations of the Compliance Program to the Compliance Officer, at the number or e-mail address below, or to their supervisor. Personnel may also report compliance issues or concerns through the Compliance “Drop Boxes” or to ODA’s Compliance Hotline at the number below. Personnel may report compliance issues or concerns anonymously, if they wish (whether through the Compliance Hotline or otherwise). The identity of the reporting personnel will be kept confidential to the extent possible, consistent with the need to investigate the issue(s) raised.

Compliance Program Contact Information	
<u>Compliance Officer</u> Leo C. Kreizman, Esq.	Ph: 718.260.4600 ext 354 Email: L.Kreizman@odahealth.org
<u>Compliance Hotline</u>	Ph: 718-260-4639

7.04 Investigation of Intimidation/Retaliation Complaints

All allegations of intimidation or retaliation resulting from good faith participation in the Compliance Program will be fully and completely investigated. The Compliance Officer, or his/her designee, will oversee any investigations and take all necessary and appropriate actions in connection with any investigation. The Compliance Officer, or his/her designee, will be assisted by internal staff and/or may solicit the support of external resources, as needed.

All individuals who may have relevant information will be promptly interviewed. At the outset of the interview process, the interviewee will be reminded that retaliation and intimidation is a violation of ODA’s Code of Conduct and this Policy, and that under certain circumstance, may be unlawful as well. The interviewee will also be reminded of ODA’s disciplinary policy for failure to cooperate in a compliance-related investigation.

All documentation related to the investigation will be kept confidential, consistent with the need to investigate the issue(s) raised. Investigative files will be kept secured in a central location under the control of the Compliance Officer or designated staff. Such investigative files will be kept separate from personnel files and will be maintained for no fewer than ten years from the date of the conclusion of the investigation, or the imposition of disciplinary sanctions or corrective actions resulting therefrom, or for such longer period of time as may be required by applicable law.

⁴ For a brief summary of New York State Labor Law §§ 740-741, please see Section Six of this document.

If the Compliance Officer determines that an employee was improperly terminated or otherwise disciplined in retaliation for good faith participation in the Compliance Program, ODA will promptly seek to re-employ that individual or otherwise remedy the retaliatory disciplinary action. The Board of Directors Compliance Subcommittee will retain oversight of all such corrective action.

If the Compliance Officer determines that an employee was retaliated against for good faith participation in the Compliance Program, appropriate disciplinary action may be taken against the offending person, subject to the oversight of the Board of Directors Compliance Subcommittee.

ODA may terminate contracts and affiliations based on retaliation or intimidation for good faith participation in the Compliance Program, subject to the oversight of the Board of Directors Compliance Subcommittee.

In order to prevent retaliation or intimidation against employees who in good faith participate in the Compliance Program, all terminations of employment must be approved by ODA's Chief Executive Officer prior to being effectuated. The Human Resources Department must be advised of the employee's participation in the Compliance Program prior to the termination decision or other adverse employment action being made.

7.05 Reporting to the Governing Body

The Compliance Officer will advise the Board of Directors Compliance Subcommittee as directed by the governing body, regarding the frequency and types of alleged acts of retaliation or intimidation and of changes in frequency of such allegations over time.

7.06 Distribution of Policy

This Policy shall be distributed to all directors, officers and employees of ODA, and to volunteers who provide substantial services to ODA.

ACKNOWLEDGEMENT

I acknowledge that I have received ODA’s Compliance Program Standards of Conduct, Structure and Guidelines and Overview of False Claims Laws and Whistleblower Protections.

I affirm the following:

I will follow the standards and procedures set forth in the Standards of Conduct and Structure and Guidelines and will ask questions if I do not understand my responsibilities under the Compliance Program.

If I become aware of any possible violations of the Compliance Program, or if I have concerns or questions about the appropriateness of any practices at ODA, I will report such issues to the Compliance Officer directly or via the Compliance Hotline or a drop box.

I understand that I may be subject to discipline (or other corrective action) if I violate the standards and requirements set forth in the Compliance Program’s Standards of Conduct and Structure and Guidelines.

Sign Name		Date
Print Name		

Print Name