



THE WESLEY COMMUNITY

# COMPLIANCE



The **Right** Direction

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131 Lawrence Street  
Saratoga Springs, NY  
12866

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# CORPORATE COMPLIANCE MANUAL

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## INTRODUCTION

The Wesley Community is dedicated and committed to meeting high ethical standards and compliance with all applicable laws in all activities regarding the operation of The Wesley Community. This commitment and dedication is essential to The Wesley Community meeting its mission and is critically important because a significant portion of The Wesley Community's services are reimbursed through governmental programs which require that The Wesley Community's business be conducted with complete integrity. This Compliance Manual (the "Manual" or "Program") reflects commitment to quality of care on the part of The Wesley Community.

As used in this document, the term "Wesley Individuals" refers to all volunteers, employees, managers, chief executives, the governing body members of The Wesley Community facilities, and any individual who owns at least 5 percent interest in a The Wesley Community facility. The term "Wesley Contractor" refers to independent contractors, vendors, or others who provide services to The Wesley Community or its facilities. Wesley Individuals and Wesley Contractors are collectively referred to as "Affected Individuals".

The Manual is applicable to many critical areas and activities, including billing, payments, medical necessity and quality of care, governance, mandatory reporting, and credentialing. For example, implementation of the Program enhances quality of care by facilitating adherence to regulatory standards. Additional purposes of the Program include organizing The Wesley Community resources to resolve compliance issues as quickly and efficiently as possible. In compliance with §6032 of the Deficit Reduction Act of 2005 ("DRA"), this Manual also documents The Wesley Community's policies and procedures for detecting and preventing fraud, waste and abuse in federal health care programs.

This Manual, with Standards of Conduct at its core, encompasses the compliance program components mandated by NY Social Services Law § 363-d(2) as well as regulations promulgated by the New York State Office of the Medicaid Inspector General ("OMIG"), found in Part 521 of Title 18 of the New York Code of Rules and Regulations ("NYCRR"). In addition, the Manual reflects compliance program recommendations issued by the United States Department of Health and Human Services, Office of Inspector General ("OIG") in its Compliance Program Guidance for Nursing Facilities, as published in 2000 and as supplemented in 2008. The Manual also reflects consideration of authoritative guidance as to best practices and effectiveness review.

Although it is modeled in conformity with the New York State statute and regulations, OMIG publications, and OIG Guidance, this Manual is specifically tailored to The Wesley Community. It is designed to meet the internal needs and specific risks particular to The Wesley Community, and it takes into account characteristics of The Wesley Community such as culture, size, structure, clinical setting, and operational processes.

Many aspects of the Manual, including portions of the Standards of Conduct, have been in effect since before the inception of a formal compliance program, and have been modified over time as operational and compliance requirements have evolved. Existing policies, procedures, and standards have been reviewed, revised, and brought under the umbrella of a coordinated compliance program.

The Manual is an evolving document, reflecting an ongoing process of continuous quality improvement. Accordingly, the Manual will be amended and supplemented from time to time to conform to changes in laws, regulations, guidance, and best practices. **Adherence to the Manual is a condition of employment for all employees of The Wesley Community.**

# POLICY STATEMENT

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It is the policy of The Wesley Community to provide services in compliance with all state and federal laws governing its operation and consistent with the highest standards of business and professional ethics. This Manual is a solemn commitment to our residents, our community, to those governmental agencies that regulate The Wesley Community and to us.

All Affected Individuals must carry out their duties for The Wesley Community in accordance with this policy. To assist Affected Individuals with their obligation to comply with this policy, this Manual includes standards of conduct in a number of specific areas. Conduct that does not comply with these standards is not authorized by The Wesley Community and is outside the scope of employment or professional staff membership at The Wesley Community.

Any violation of applicable law, the standards contained in this Manual, or deviation from appropriate ethical standards, will subject an Affiliated Individual to disciplinary action, which may include oral or written warning, disciplinary probation, suspension, and demotion, dismissal from employment or revocation of privileges. These disciplinary actions also may apply to an employee's supervisor who directs or approves the employee's improper actions or is aware of those actions but does not act appropriately to correct them or who otherwise fails to exercise appropriate supervision.

If, at any time, an Affected Individual becomes aware of any apparent violation of The Wesley Community's policies, he or she must report it in accordance with the reporting requirements of this Manual. All persons making such reports are assured that such reports will be treated as confidential to the extent permissible and that such reports will be shared only on a bona fide need to know basis. The Wesley Community will take no adverse action against persons making such reports in good faith and without malicious intent whether or not the report ultimately proves to be well founded. In addition, The Wesley Community will not tolerate retaliation of any person that reports a violation by another person. If an Affected Individual does not report conduct violating The Wesley Community's policies, the Affected Individual may be subject to disciplinary action up to and including termination of employment or revocation of privileges.

The laws affecting the operation of The Wesley Community's activities are complex and many. In addition, this Manual, addresses, in general terms, only several of the more important legal and ethical principles affecting The Wesley Community's activities. Their mention in this Manual is not intended to minimize the importance of other applicable laws, professional standards, or ethical principles. It is not expected that each employee will be fully versed in all laws of permissible activities involved in their work. Therefore, if an employee has a question regarding the legality or propriety of a course of action, the employee should seek guidance from his or her supervisor or from the Compliance Officer before taking any action.

# ELEMENTS OF PROGRAM

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The Program has seven core elements, which are structured according to the requirements set forth in NY Social Services Law § 363-d(2) and include:

1. Written policies, procedures, and standards of conduct that:
  - 1.1. articulate the organization's commitment to comply with all applicable federal and state standards;
  - 1.2. describe compliance expectations (as embodied in the Standards of Conduct);
  - 1.3. implement the operation of the compliance program;
  - 1.4. provide guidance to employees and others on dealing with potential compliance issues;
  - 1.5. identify how to communicate compliance issues to appropriate compliance personnel;
  - 1.6. describe how potential compliance issues are investigated and resolved by the organization;
  - 1.7. include a policy of non-intimidation and non-retaliation for good faith participation in the compliance program, including but not limited to reporting potential issues, investigating issues, conducting self-evaluations, audits and remedial actions, and reporting to appropriate officials; and
  - 1.8. identify and address all requirements listed under 42 U.S.C.1396-a(a)(68).
2. Designation of a Compliance Officer and a Compliance Committee who report directly and are accountable to the organization's chief executive or other senior management.
3. Establishment and implementation of effective training and education for the compliance officer and organization employees, the chief executive and other senior administrators, managers and governing body members (with training and education to occur at least once each year and is made a part of the orientation for all new employees, chief executives, managers, or governing body members).
4. Establishment and implementation of effective lines of communication, ensuring confidentiality, between the compliance officer, members of the compliance committee, the organization's employees, managers and governing body, and the organizations first tier, downstream, and related entities (with such lines of communication being accessible to all and allowing compliance issues to be reported including a method for anonymous and confidential good faith reporting of potential compliance issues as they are identified).
5. Well-publicized disciplinary standards through the implementation of procedures which encourage good faith participation in the compliance program by all affected individuals.
6. Establishment and implementation of an effective system for routine monitoring and identification of compliance risks. The system should include internal monitoring and audits and, as appropriate, external audits, to evaluate the organization's compliance with the medical assistance program requirements and the overall effectiveness of the compliance program.
7. Establishment and implementation of procedures and a system for:
  - 7.1. promptly responding to compliance issues as they are raised;
  - 7.2. investigating potential compliance problems as identified in the course of self evaluations and audits;
  - 7.3. correcting such problems promptly and thoroughly to reduce the potential for recurrence; and
  - 7.4. ensuring ongoing compliance with the medical assistance programs requirements.

# STANDARDS OF CONDUCT

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## **A. Resident Care and Resident Rights**

It is The Wesley Community's policy to provide the highest quality of care to its residents. The Wesley Community believes that state and federal regulations governing The Wesley Community's operation provide a minimum baseline of care standards which The Wesley Community strives to exceed in the provision of care and services to The Wesley Community's residents.

Each resident will receive services in accordance with a comprehensive plan of care developed by an interdisciplinary care team based on periodic comprehensive assessments of the resident's condition. Each plan of care is designed to ensure that The Wesley Community provides the necessary care and services to attain or maintain a resident's highest practicable physical, mental and psychosocial well-being.

Each resident is entitled to a dignified existence, self-determination and the provision of care and services in a manner and in an environment that promotes the maintenance or enhancement of a resident's quality of life. It is The Wesley Community's policy to protect, promote and foster for each resident his/her rights as a resident of The Wesley Community.

The Wesley Community has developed policies and procedures to ensure quality of care and the protection and promotion of resident rights which are to be adhered to by The Wesley Community's staff. It is not the intent of this Manual to set forth all such policies and procedures but to identify several of the more significant ones which are:

1. Comprehensive assessments for each resident will be conducted in accordance with applicable federal and state laws and regulations;
2. All resident plans of care will be developed by an interdisciplinary care team based upon the periodic comprehensive assessment of the resident's condition which shall include measurable objectives and timetables to meet the resident's medical, nursing, mental and psychosocial needs;
3. All services and care required by a resident's plan of care will be provided to the resident by qualified staff;
4. Residents are free from verbal, mental, sexual or physical abuse, corporal punishment or involuntary seclusion.

The Wesley Community's policies and procedures with regard to resident rights and resident care are available from the Compliance Officer, the Administrator's office, the Director of Social Services or the Director of Nursing.

## **B. Referrals**

Federal and state law prohibit The Wesley Community and its employees from (1) soliciting or accepting or (2) offering or paying remuneration in exchange for referrals of patients eligible for Medicare, Medicaid or another federal health care program. Federal and state law also prohibit (1) the offering or payment or (2) the soliciting or receipt of remuneration in return for directly

purchasing, leasing, ordering, or recommending the purchase, lease or ordering of any goods, facilities, services or items covered under the benefits of Medicare, Medicaid or other federal health programs. The term "remuneration" broadly covers the transferring of anything of value in any form or manner whatsoever. Remuneration is not limited to bribes, kickbacks and rebates. These federal and state laws are broadly written to prohibit The Wesley Community and its employees from knowingly and willfully offering, paying, asking or receiving any money or other benefit, directly or indirectly, overtly or covertly, in cash or in kind. These laws are violated even if only one purpose of a payment arrangement is to influence referrals or the procuring of goods or services.

There are many transactions that may violate these laws. It is impossible to list each and every potential violation of these laws. For your benefit, the following examples are illustrative of prohibitive activity under these laws:

1. Receiving free goods or services from a vendor in exchange for the purchase of other goods and services;
2. The routine waiver of co-insurance payments and deductibles;
3. The offering or making of gifts, loans, rebates, services or payments of any kind to an individual or entity that is an actual or prospective referral source;
4. Entering into a professional service, management service or consulting service agreement where payment is based on other than fair market value or is based on the volume of referrals, i.e., percentage of revenue generated.

Federal regulations known as the "Safe Harbor" regulations provide that certain payment practices will not violate these laws if the regulatory requirements for such payment practices are adhered to. The "Safe Harbor" regulations are intended to help providers protect against abusive payment practices while permitting legitimate ones. If an arrangement fits within a "Safe Harbor" it will not create a risk of criminal penalties and exclusion from the Medicare, Medicaid or other federal health care programs. "Safe Harbor" protection is available for certain payment practices, including but not limited to the following:

1. Investment interest;
2. Space rental;
3. Equipment rental;
4. Personal service and management contracts;
5. Sale of practice;
6. Referral services;
7. Warranties;
8. Discounts;
9. Payments to employees;
10. Group purchasing organizations;

11. Certain waivers of beneficiary co-insurance and deductible amounts by hospital;
12. Increased coverage, reduced cost sharing amounts or reduced premium amounts offered by health plans;
13. Price reductions offered to health plans;
14. Value-based arrangements;
15. Cybersecurity technology and services;
16. Patient engagement and support.

Analysis of payment practices under these laws and the "Safe Harbor" regulations is complex and depends on the specific facts and circumstances of each transaction. Employees should not make unilateral judgments on the availability of a "Safe Harbor" for a payment practice, investment, discount or other arrangement. These situations should be brought to the attention of the Compliance Officer for review with legal counsel.

As a result of the foregoing, **all contracts and arrangements with actual or potential referral sources and all contracts and arrangements with vendors must comply with applicable state and federal laws and regulations. All personal service, management service and consulting service agreements must comply with applicable state and federal laws and regulations. Moreover, any other financial or other business arrangement between The Wesley Community and other health care professionals or providers must be structured to comply with all applicable state and federal laws and regulations.**

If questions arise regarding whether a proposed business arrangement, financial arrangement, or contract is in compliance with federal or state law, an employee is required to seek guidance from the Compliance Officer who in turn may seek appropriate guidance from legal counsel.

### **C. Billing and Claims; Cost Reports**

The Wesley Community has an obligation to its residents, third party payors and the state and federal government to exercise diligence, care and integrity when submitting claims for payment. The right to bill the Medicare and Medicaid programs carries a responsibility that may not be abused. The Wesley Community is committed to maintaining the accuracy of every claim it processes and submits. Many employees have responsibility for entering charges and procedure codes. Each of these individuals is expected to monitor compliance with applicable billing rules. Any false, inaccurate, or questionable claims should be reported immediately to the employee's supervisor or the Compliance Officer.

False billing is a serious offense. Medicare and Medicaid rules prohibit knowingly and willfully making or causing to be made any false statement or representation of the material fact in an application for benefits or payment. It is also unlawful to conceal or fail to disclose the occurrence of an event affecting the right to payment with the intent to secure payment that is not due. Examples of false claims include:

1. Claiming reimbursement for services that have not been rendered;
2. Filing duplicate claims;

3. "Upcoding" a resident's condition to a higher RUGs category;
4. Including inappropriate or inaccurate costs on cost reports to be submitted under the Medicare or Medicaid programs;
5. Billing for services or items that are not medically necessary;
6. Failing to provide medically necessary services or items;
7. Billing excessive charges.

With respect to the submission of claims to the Medicare or Medicaid program, it is The Wesley Community's policy that claims must: (1) be accurate and timely submitted; and (2) be only for items or services that (a) are medically necessary, (b) fall within the coverage guidelines contained in applicable laws, rules and regulations, and (c) are documented in the resident's medical record. In this regard:

1. Prior to submitting a claim for payment, it is necessary to verify that all documentation for services reflected on the claim, such as physician orders and certificates of medical necessity, are available in a proper and timely manner;
2. Claims may only be submitted when appropriate documentation supports the claim and only when such documentation is maintained and available for audit and review;
3. Documentation which serves as the basis for a claim must be appropriately organized in legible form so that such documentation may be audited and reviewed;
4. Diagnosis and procedures reported on reimbursement claims must be based on the medical record and other documentation;
5. Documentation necessary for accurate code assignment must be made available to all employees with coding responsibility; and
6. Compensation for billing department coders and billing consultants shall not provide for any financial incentive to improperly upcode claims.

With regard to the filing of cost reports, it is The Wesley Community's policy that all Medicare and Medicaid cost reports must be prepared utilizing generally accepted accounting principles based upon documents and reports that are maintained in The Wesley Community's day to day business. Cost reports must document only those costs which The Wesley Community's employees and/or agents believe in good faith are allowable. Employees and agents must provide accurate and complete documentation and reports to the business office in connection with the preparation of cost reports.

With regard to claim submissions and cost reporting, the following conduct is specifically prohibited:

1. Claims for payment or reimbursement of any kind that are false, fraudulent, inaccurate or fictitious;
2. Falsified medical records, time cards or other records used as the basis for submitting claims;

3. For services that must be coded, use of a code that does not accurately describe the documented service when there is a more accurate code that could have been used. This includes post-dating orders or signatures. Late entries should include an explanation of reason for delay in entry;
4. Bills submitted to Medicare, Medicaid or applicable insurance plan for items or services which are known are not covered by Medicaid, Medicare or applicable insurance plan;
5. Filing claims for the same item or service to more than one payor source whereby The Wesley Community will receive duplicate or double payments;
6. Submission of claims without the availability of adequate documentation;
7. Falsification of any report or document used to document the cost of utilization of services by payor source;
8. Failure to report a known error or inaccuracy in any cost report or underlying document used to prepare a cost report; and
9. Recording inappropriate, inaccurate, or non-allowable costs on a cost report.

Any employee or professional staff member who discovers an error or inaccuracy in any claim for payment for health care services that has been submitted or will be submitted should alert his or her supervisor, the Director of Finance or the Compliance Officer. Any employee who discovers an error or inaccuracy in any cost report that has been submitted or will be submitted should alert his or her supervisor, the Director of Finance or the Compliance Officer.

#### **D. Non-Discrimination in Resident Services and Charges**

It is The Wesley Community's policy, as required by state and federal law, not to discriminate in the admission, retention and care of residents because of race, color, blindness, national origin, sex, sexual preference, religion, sponsorship or source of payment. Each resident will receive medically necessary items and services that, in the opinion of the interdisciplinary care group and as set forth in that resident's plan of care, are required to assure the resident attains or maintains the highest practicable physical, psychosocial and mental well-being.

Such medically necessary items and services shall be offered to the resident regardless of the resident's source of payment. Charges for all items and services provided shall be based upon The Wesley Community's usual and customary charges. Nothing of value, including but not limited to the offer of free of services, shall be offered to residents or prospective residents to induce them to utilize The Wesley Community's services.

Under appropriate circumstances, The Wesley Community may provide financial accommodation (such as allowing monthly payments over time) or may waive resident co-insurance payments or deductible amounts based on an assessment of the individual resident's financial condition and a determination that the payment of such co-insurance payment or deductible amount would cause a financial hardship for the resident. Any such financial accommodation must be based on financial hardship, documented in writing and approved by The Wesley Community's Director of Finance and the Compliance Officer. Any approved waiver of resident co-insurance payment or deductible amounts must be appropriately disclosed to all third-party payors responsible for the

resident's bill.

In addition, it is The Wesley Community's policy, as required by state and federal law, not to charge, for any service provided to a resident under Medicaid, money or other consideration at a rate in excess of The Wesley Community's established Medicaid reimbursement rate. Moreover, it is The Wesley Community's policy not to charge, solicit, accept or receive in addition to any amount otherwise required to be paid under Medicaid any gift, money, donation or other consideration (other than a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to the patient) - (a) as a precondition of admitting a resident or (b) as a requirement for the resident's continued stay at The Wesley Community.

The following activities are specifically prohibited under this Standard of Conduct:

1. Failure to provide services that are either (a) ordered by the resident's physician; (b) indicated as necessary by the resident's most recent MDS assessment; and/or (c) contained in the resident's plan of care.
2. Rendering care based upon the resident's payor source without regard for the resident's needs and/or state of preferences;
3. Waiver of resident deductibles and/or co-insurance payments without advanced written approval of the Compliance Officer;
4. The offering or payment of anything of value, including but not limited to free services, to any resident or prospective resident to induce such individual to utilize The Wesley Community's services;
5. Discounts, credits, charity care or other arrangements that have not been approved in writing by the Compliance Officer;
6. Discriminating in the admission, retention and care of residents on the basis of race, color, blindness, national origin, sex, sexual preference, religion, sponsorship or source of payment;
7. Charge a Medicaid resident for Medicaid covered services provided by The Wesley Community any money or consideration at a rate in excess of The Wesley Community's established Medicaid rate; and
8. Charge, solicit, accept or receive any gift, money, donation or other consideration as: (a) a precondition of admitting a resident to The Wesley Community or (b) as a requirement for a resident's stay at The Wesley Community, except for charitable, religious or philanthropic contributions from an organization or a person unrelated to the resident.

#### **E. Confidentiality**

Employees and professional staff members possess sensitive, privileged information about residents and their care. Residents properly expect that this information will be kept confidential. The Wesley Community takes very seriously any violation of a resident's confidentiality. Discussing a resident's medical condition or providing any information about a resident to anyone other than

hospital personnel who need the information or other authorized persons will result in disciplinary action. Employees and professional staff should not discuss residents outside The Wesley Community or with their families.

The Wesley Community is required to maintain the confidentiality of each resident's medical record. In this regard, medical records may not be released except with the authorization of the resident, unless otherwise required or permitted by law. Special confidentiality requirements apply with regard to medical records relating to HIV infection and AIDS. Medical records should not be physically removed from The Wesley Community, altered or destroyed. Employees who have access to medical records must exercise their best efforts to preserve their confidentiality and integrity and no employee is permitted access to the medical record of any resident without a legitimate reason for doing so. If a question arises as to the permissibility of the release of a resident's medical record or any information contained therein, the employee should seek guidance from the employee's supervisor or the Compliance Officer.

Additionally, employees are to treat as confidential The Wesley Community's proprietary business assets including: valuable ideas, business plans, and other information about The Wesley Community's business. The Wesley Community's employees should respect The Wesley Community's assets as they would their own. No employee shall divulge to unauthorized persons, either during or after their employment, any information of a confidential nature connected with the business of The Wesley Community. Examples of confidential business information include: personnel information, such as job title, level, duties, skill or salary; or any information disclosure of which could adversely affect the business interests of The Wesley Community.

#### **F. Business Entertainment or Gifts**

The Wesley Community recognizes that business dealings may include shared meals or other similar social occasions which may be proper business expenses and activities. More extensive entertainment, however, only rarely will be consistent with The Wesley Community's policy and should be reviewed and approved in advance by the Compliance Officer before the employee may partake of or offer such entertainment.

Employees may not receive any gift under circumstances that could be construed as an improper attempt to influence The Wesley Community's decisions or actions. Moreover, employees may not receive any gift from any vendor who provides services to The Wesley Community or is seeking to provide services to The Wesley Community or from any actual or potential patient referral sources. When an employee receives a gift that violates this policy, the gift should be returned to the donor and reported to the Compliance Officer. Gifts may be received by employees when they are of such nominal value that they would not reasonably be perceived by anyone as an attempt to affect the judgment of the recipient, for example, token promotional gratuities from suppliers, such as advertising novelties marked with the donor's name, are not prohibited under this policy.

No employee may make a cash gift or non-cash gift of more than nominal value to any officer, director or employee of a firm or entity or any individual that is an actual or prospective vendor of The Wesley Community or an actual or potential source of referrals.

Under no circumstances may an employee of The Wesley Community pay for the meals, refreshment, travel, lodging expenses or give anything of value to a government employee (state, federal or local) who in the course of his or her official conduct may investigate, survey or otherwise deal with The Wesley Community.

Moreover, no employee may charge, solicit, accept or receive in addition to any amount

otherwise required to be paid by third party payors, any gift, money, or other consideration from a resident or organization or person related to a resident as a pre-condition of admission or as a requirement for continued stay at The Wesley Community.

Further, no employee may request and/or accept any remuneration, tip or gratuity in any form from a resident, resident's family or sponsor for any services provided or arranged for or for denial of services by The Wesley Community other than specified fees ordinarily paid for care excluding donations, gifts and legacies given in behalf of The Wesley Community.

If an employee has any question as to whether (1) the receipt of a gift or offering of a gift or (2) the participation in an entertainment event or the offering to another the opportunity to participate in an entertainment event violates this policy, the employee is required to seek guidance from the Compliance Officer.

### **G. Conflicts of Interest**

No employee should place him or herself or allow him or herself to be placed in a situation where the employee's personal interests might conflict with the interests of The Wesley Community. The Wesley Community recognizes and respects an individual employee's right to invest or participate in activities outside of his/her employment provided that these in no way conflict with The Wesley Community's interests or welfare and do not interfere with the employee's responsibilities to The Wesley Community or the effectiveness of the employee's job performance.

Although it is difficult to set forth all possible situations which might be considered as conflicting with The Wesley Community's interests, the following are examples of situations which employees, including members of their immediate families, must avoid:

1. No employee should perform any outside employment or engage in any outside activities which interfere with the effective performance of the employee's duties as a Wesley Community employee;
2. No employee shall have a financial interest in a firm or entity which is doing, or seeking to do, business with The Wesley Community or which is a competitor of The Wesley Community. However, ownership of less than 1% of the securities of a publicly traded company shall not be considered significant or contrary to this policy;
3. No employee should render services in any capacity, such as a director, officer, employee or consultant to any person or firm that is competitive with The Wesley Community, provides services to The Wesley Community or is a third-party payor with regard to services provided at The Wesley Community;
4. No employee should use their position at The Wesley Community for personal gain such as by soliciting or accepting for personal benefit business opportunities that might otherwise accrue to the benefit of The Wesley Community;
5. No employee should use for his or her personal benefit, or disclose to unauthorized persons, any confidential or proprietary information about The Wesley Community or its operation;
6. No employee should borrow money from individuals or firms (other than banks and/or lending institutions) doing, or seeking to do, business with The Wesley Community;

7. No employee should compete with The Wesley Community by selling or leasing or offering to sell or lease services or products similar to those services or products offered by The Wesley Community;
8. No employee should purchase services or products for The Wesley Community from their family members or from business organizations with which they or their family members are associated, without first obtaining written permission from the Compliance Officer;
9. No employee or member of their immediately family should accept significant gifts, discounts or other preferred personal treatment from any person associated with a present or prospective customer, competitor or supplier of The Wesley Community;
10. No employee should have outside employment or business interests that place the employee in a position of appearing to represent The Wesley Community; and
11. No employee may use The Wesley Community's assets for personal benefit or personal business purposes.

Any personal or business activities by an employee that may raise concerns along these lines must be reviewed with and approved in advance and in writing by the Compliance Officer.

## **H. Governance**

The Wesley Community is committed to being compliant with applicable laws pertaining to its governance, including, but not limited to, the New York Not-for-Profit Corporation Law, the New York Public Health Law, the rules and regulations of the New York State Department of Health, the Internal Revenue Code and the pertinent regulations of the Internal Revenue Service. The Wesley Community's directors and officers will adhere to conduct which is compliant with such laws and regulations. Moreover, The Wesley Community's directors and officers will adhere to and comply with all applicable The Wesley Community policies pertaining to governance, including The Wesley Community's conflict of interest policy pertaining to its directors and officers.

## **I. Credentialing**

Professional staff subject to The Wesley Community's credentialing requirements will comply with The Wesley Community's credentialing policies and procedures, including, but not limited to, the timely submission of all documentation, information, waivers and releases required for the credentialing/recredentialing of professional staff members. Professional staff members shall comply with all applicable laws pertaining to the practice of their profession, including, but not limited to, the New York Education Law and the Department of Education's regulations, and will avoid any actions or omissions that would constitute an unacceptable practice under either the New York Education Law or the Department of Education's regulations. Professional staff members will immediately notify The Wesley Community's medical director of any events or circumstances that would adversely impact upon the member's professional privileges or professional practice, including, but not limited to, the initiation of any professional disciplinary action by, as the case may be, the Office of Professional Medical Conduct or the New York Education Department.

## J. 42 U.S.C. 1396-a(a)(68)

The Wesley Community recognizes the need for it and New York State to comply with certain federal requirements pertaining to medical assistance programs. Accordingly, pursuant to 42 U.S.C.1396-a(a)(68), and to the extent that The Wesley Community receives or makes annual payments under New York State's medical assistance plan of at least \$5,000,000, The Wesley Community has:

- i. established written policies for all Affected Individuals that provide detailed information about
  - A. the False Claims Act established under sections 3729 through 3733 of title 31,
  - B. administrative remedies for false claims and statements established under chapter 38 of title 31,
  - C. any State laws pertaining to civil or criminal penalties for false claims and statements, and
  - D. whistleblower protections under such laws, with respect to the role of such laws in preventing and detecting fraud, waste, and abuse in Federal health care programs (as defined in section 1320a-7b(f) Title 42);
- ii. included as part of its written policies, detailed provisions regarding The Wesley Community's policies and procedures for detecting and preventing fraud, waste, and abuse; and
- iii. included in its employee handbook
  - A. a specific discussion of the laws described above,
  - B. the rights of employees to be protected as whistleblowers, and
  - C. the entity's policies and procedures for detecting and preventing fraud, waste, and abuse;

Additionally, a summary of federal and New York State laws on false claims and whistleblower protections, as prepared and provided by the OMIG and which is made available to all Affected Individuals is set forth in Appendix A. A specific discussion of these laws, the rights of employees to be protected, and The Wesley Community's applicable policies are included in the employee handbook.

## COMPLIANCE OFFICER AND COMMITTEE

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To assure that The Wesley Community's operations are being conducted in compliance with applicable law and the highest ethical standards, The Wesley Community has established the position of Compliance Officer. A Compliance Committee has also been established to oversee the implementation and operation of the Program.

The Compliance Officer is: Dutch Hayward ([DHayward@thewesleycommunity.org](mailto:DHayward@thewesleycommunity.org); 518-691-1402)

The Members of the Compliance Committee are:

### Position

Administrator;  
Director of Finance;

Director of Nursing;  
Medical Director;  
Director of Social Services;  
IT Director;  
Human Services Director  
Pharmacy Director  
Compliance Officer, in the event the Compliance Officer does not occupy one of the positions designated hereinabove.

The Compliance Committee's functions include, but are not limited to:

- Receiving regular reports from the Compliance Officer and providing guidance regarding the operation of the Program;
- Approving the internal auditing plan carried out under the Program;
- Approving the compliance training program provided to all staff, contractors, and Board members;
- Reviewing and confirming the adequacy of all investigations of suspected non-compliance and any corrective action taken as a result of such investigations;
- Reviewing policies and procedures related to compliance; and
- Recommending and approving any changes to the Program.

The Compliance Officer may designate other individuals to perform compliance-related tasks or to assist in the evaluation or resolution of specific issues from time to time. The responsibilities of the Compliance Officer include, but are not limited to:

- Overseeing and monitoring the implementation of the Program;
- Establishing methods, such as periodic audits and ongoing monitoring, to reduce The Wesley Community's vulnerability to fraud and abuse;
- Periodically reviewing and revising the Program in light of significant changes in the needs of The Wesley Community or changes in the law and in the standards and payor procedures;
- Developing, coordinating and participating in training programs;
- Maintaining records of Compliance Program activities;
- Ensuring that the OIG's and the OMIG's lists of excluded individuals and entities and the General Services Administration's list of parties debarred from federal programs, have been checked with respect to all employees and contractors; and
- Coordinating the investigation of any report or allegation concerning possible violations of the Program, and monitoring subsequent corrective action and/or compliance in accordance with The Wesley Community policy.

The Compliance Officer and Compliance Committee each will report directly to the Chief Executive Officer or another senior administrator designated by the Chief Executive Officer, and shall also each periodically report directly to the Board of Directors on the activities governed by the Program.

# EDUCATION AND TRAINING

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To ensure that all employees, professional staff members, executives and directors are familiar with their responsibilities under The Wesley Community's Compliance Program, The Wesley Community will implement an ongoing educational and training program. All employees, professional staff members, executives and directors will be required to participate in initial and annual training sessions. Additionally, periodic training sessions, as necessary, will be conducted, as determined by the Compliance Committee or respective Department Head, for employees of certain departments with responsibilities for purchasing, billing and coding or any other responsibilities that the Compliance Committee or respective Department Head determines appropriate for periodic training. It is the understanding of the Compliance Committee that appropriate periodic training takes place at the respective Department Head's discretion. Training may be intramural or extramural, as appropriate. When considering outside training sources, the Compliance Officer will consider: offerings of professional organizations; programs offered by carriers; third-party billing company seminars; the services of an outside consultant; and other resources as available and appropriate. Topics for training may be drawn from publications such as OMIG publications; DOH Medicaid Updates; the OIG's Special Fraud Alerts; OIG Advisory Opinions; and Medicare Part B News. Examples of topics that may be pertinent to such an individual's responsibilities include:

- Coding requirements and methodology, including proper use of The Wesley Community's medical record documentation forms;
- General understanding of the claim development and submission processes;
- Proper billing standards and procedures and submission of accurate bills to payors and patients; and
- Legal sanctions for submitting deliberately or recklessly false billings.

## **A. Initial and Annual Training**

Initial and annual training sessions will focus on the requirements of The Wesley Community's Compliance Program as set forth in this Manual and the legal and ethical standards generally required of all employees, professional staff members, executives and directors. Each employee, professional staff member, executive and director will be required to sign a certification acknowledging attendance at the initial and each annual Compliance Training Session which certification will be maintained by the Compliance Officer, with a copy maintained in the employee's personnel file, and as to employees, a copy being maintained in the employee's personnel file.

## **B. Periodic Training**

Periodic Training Sessions, as necessary, will highlight federal and state laws that affect the employees' area of responsibility. For example, periodic training will be held in areas involving federal and state anti-kickback statutes; current billing requirements; and current coding requirements. Employees required to attend periodic training sessions will be required to sign a certification of attendance which will be maintained by the Compliance Officer, with a copy to be maintained in the employee's personnel file.

## **C. Failure to Attend Required Training**

Any employee or professional staff member or executive who fails to attend a training session for which the employee or professional staff member or executive is required to attend, will result in disciplinary action. Repeated failures to attend required training sessions will result in termination of employment and/or loss of professional privileges. Directors who fail to attend required training sessions may be subject to removal from the Board of Directors.

#### **D. Ongoing Communication and Changes in Compliance Manual**

The Compliance Officer will distribute in writing and/or post in conspicuous places, any modifications of or amendments to the Compliance Manual. The Compliance Officer will also provide employees, professional staff members, executives and directors with written explanations of any substantial changes in the Compliance Manual or, if the Compliance Officer determines that written materials are insufficient, interim training sessions will be conducted.

Employees, professional staff, executives and directors will be provided periodic information about The Wesley Community's Compliance Program, changes in applicable laws or ethical standards that may affect their respective responsibilities through written memoranda, newsletters, periodic training sessions or other appropriate forms of communication.

The Wesley Community has also established and implemented effective and confidential lines of communication, between the Compliance Officer, members of the Compliance Committee, the organization's employees, managers and governing body, and the organizations first tier, downstream, and related entities. These lines of communication are accessible to all and are designed to allow compliance issues to be reported including a method for anonymous and confidential good faith reporting of potential compliance issues as they are identified.

#### **E. Communication with Wesley Contractors**

Under the Deficit Reduction Act, The Wesley Community is required to disseminate information on Corporate Compliance to all contractors and agents who, on behalf of The Wesley Community, furnish or authorize the furnishing of Medicaid health care items or services; perform billing or coding functions; or are involved in the monitoring of health care provided by The Wesley Community. The DRA requires that all such contractors and agents adopt and abide this Policy in relation to all work performed for The Wesley Community; train their employees who are involved in performing work for The Wesley Community to comply with applicable laws; and make this Policy available to those employees. To facilitate our contractors' and agents' compliance training and education, this Policy is posted on The Wesley Community's website.

## **REPORTING REQUIREMENTS AND LINES OF COMMUNICATION**

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### **A. Reporting**

It is the responsibility of every Affected Individual to report any known instances of or reasonable suspicions of any violation of applicable state or federal law, ethical standards or The Wesley Community's policies, including the standards of conduct contained in this Manual. To report a suspected violation, an individual is required to notify, either verbally or in writing, the Compliance Officer or the individual's immediate supervisor, if an employee or professional staff member.

All Affected Individuals have available to them the following anonymous and/or confidential reporting options:

A. Complete a written Report of Potential Non-Compliance (Part 1 (see Appendix A). This report form can also be obtained on the Wesley Community's website at [https://www.thewesleycommunity.org/wp-content/uploads/2018/01/Report\\_of\\_Potential\\_Non-Compliance.pdf](https://www.thewesleycommunity.org/wp-content/uploads/2018/01/Report_of_Potential_Non-Compliance.pdf)

**Once the report form is completed, it should be forwarded directly to the Corporate Compliance Officer via link on website, email ([compliance@thewesleycommunity.org](mailto:compliance@thewesleycommunity.org)), fax (518-691-1647), or mail (Corporate Compliance Officer, Wesley Community, 131 Lawrence St. Saratoga Springs, NY 12866 or place in a Compliance Drop-Box (WHCC-outside Human Services, Embury-outside the dining hall, Woodlawn-in the staff lounge, use the completed form to place a call to the Corporate Compliance Hotline at (518) 691-1646; or**

B. Contact the Corporate Compliance Officer or a member of the Compliance Committee directly by phone or schedule an appointment to pose a compliance-related question and/or report any concerns. The Compliance Officer can be reached directly at (518) 691-1402.

Reports of potential non-compliance are confidential. If the individual making the report identifies him/herself, the Compliance Officer will respond to the individual within seven (7) business days. Resident or family complaints or concerns should be handled in accordance with The Wesley Community's Grievance Policy.

Once a Report of Potential Non-Compliance has been received, the Corporate Compliance Officer, along with the relevant Department Managers and/or members of the Compliance Committee, will review the available evidence and undertake appropriate investigations (details of which are discussed later in the Manual).

Any supervisory staff personnel receiving a report of a suspected violation is required to immediately notify the Compliance Officer. If the suspected violation involves the employee's immediate supervisor, the employee should make the report directly to the Compliance Officer. If the suspected violation involves the Compliance Officer, the report should be made directly to The Wesley Community's administrator or a member of the Compliance Committee. Failure to report a suspected violation may result in disciplinary action.

## **B. Examples of Activities to be Reported**

The following list of activities that should be reported is not an all-inclusive list but is designed to illustrate the types of conduct that should be reported:

- 1) the acquisition of any information that gives an individual reason to believe that an employee, professional staff member or contractor is engaged in or plans to engage in any conduct prohibited by applicable law, ethical standards or the policies of The Wesley Community, including the Standards of Conduct contained herein (hereinafter collectively "Standards")
- 2) The acquisition of any information indicating that any other person or entity associated with The Wesley Community plans to violate any of the foregoing Standards; and

- 3) An employee is instructed, directed or requested to engage in conduct which violates any of the foregoing Standards.

### **C. Confidentiality**

To the extent permissible, The Wesley Community shall treat all reports of suspected violations of Standards as confidential. However, it must be recognized that under certain circumstances the name of the individual making the report will be communicated to the Compliance Officer, if the report is made originally to the employee's supervisor, to an individual responsible for conducting an investigation of the suspected violation or to a governmental agency investigating any such suspected violation. Any such disclosure will only be made on a bona fide need to know basis.

### **D. Non-Retaliation and Non-Intimidation**

To ensure employee cooperation, neither The Wesley Community nor its respective employees, professional staff members, executives and directors shall retaliate or intimidate any individual from good faith participation in the Program, including but not limited to submitting a report of a suspected violation or participating in an investigation, self-evaluation or audit of a suspected violation. Any employee, professional staff member, executive or director who intimidates another employee or takes retaliatory action or retribution against another employee who has either reported a suspected violation or participated in an investigation of a suspected violation will be subject to disciplinary action or, as to a director, removal from the Board of Directors.

## **DISCIPLINARY PROCEDURES**

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All employees, professional staff members, executives and directors are required to comply with applicable state and federal law, ethical standards and The Wesley Community's policies, including the standards of conduct contained in this Manual (hereinafter collectively "Standards"). Any employee or professional staff member or executive who violates any of the foregoing Standards will be subject to disciplinary action, up to and including termination of employment or termination of professional staff privileges. Any director who violates any of the foregoing Standards may be subject to removal from the Board of Directors.

Disciplinary action will be taken against an employee or professional staff member who:

- A. Authorizes or participates directly in a violation of a Standard;
- B. Deliberately fails to report a violation of a Standard;
- C. Deliberately withholds relevant and material information concerning a violation of a Standard;
- D. Deliberately fails to cooperate in an investigation of a suspected violation of a Standard;
- E. Retaliates or seeks or causes retribution against any individual who has either reported a suspected violation of a Standard or participated in an investigation of a suspected violation;
- F. Encourages, directs, facilitates or permits either actively or passively non-compliant behavior; and

#### G. Fails to participate in required training programs;

Disciplinary action may also be taken against any supervisory personnel who direct or approve an employee's actions which result in a violation of a Standard, is aware that an employee's actions which violate a Standard but fails to take appropriate corrective action or who otherwise fails to exercise appropriate supervision.

Disciplinary action may include oral or written warning, probation, suspension, and demotion, termination from employment or suspension or termination of staff privileges. Disciplinary action will be taken in accordance with The Wesley Community's personnel policies and procedures. Disciplinary action will be taken on a fair, equitable and consistent basis. Disciplinary action will be appropriate to the level of the employee's culpable conduct, that is, the more serious the level of culpable conduct (intentional conduct or reckless non-compliance) will result in more significant disciplinary action. Notwithstanding the foregoing, this statement is not a guaranty of progressive discipline, and The Wesley Community reserves the right to terminate an employee at any time for any lawful reason.

## MONITORING AND AUDITING

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The Wesley Community will have in place a system for routinely identifying compliance risk areas and for self-evaluation including internal and external audits as needed. It is intended that this process will result in continuous improvement in professional, business and operational practices of The Wesley Community.

The Centers for Medicare and Medicaid Services, the Office of the Inspector of General, the New York State Department of Health and the New York State Office of the Medicaid Inspector General, have made information on the Medicare and Medicaid programs available on their respective websites and The Wesley Community will utilize such resources in operating its compliance program and continuing to monitor the progress of its compliance program.

As required by the circumstances, The Wesley Community will seek the advice of consultants for assistance in coding questions, and will consult with legal counsel for assistance in interpreting federal and state regulations and guidance as needed.

The Compliance Officer or designee will be responsible for the processes for reviewing bills and medical records for compliance with applicable coding, billing, and documentation requirements. A representative sampling of claims will be periodically reviewed prior to submission, and any identified defects will be corrected.

Self-audits will be used to review such matters as:

- Whether bills are properly coded and accurately reflect the services provided and documented in the medical record;
- Whether documentation is completed correctly;
- Whether the services or items provided were medically reasonable and necessary;
- Whether the services were provided by appropriately credentialed individuals; and

- Whether there were any incentives for unnecessary services.

Internal audits will involve routine review of appropriate samplings of charts on a regularly scheduled basis. In addition, focused audits will be performed to verify implementation of any recommended corrective actions.

Risk areas identified by internal or outside audits will be examined in subsequent internal audits as warranted. Where an audit reveals the need for additional education of employees and clinical staff, the Compliance Officer will determine the means by which additional training and education will be implemented.

In addition to internal monitoring and auditing, the Compliance Officer will be responsible for procedures to review denied, rejected, and down-coded claims. Any rejection or down-coding patterns that are identified will be promptly addressed, with additional training and education as needed.

As necessary, The Wesley Community will develop written policies and procedures that address identified risk areas. These written policies and procedures will be communicated to staff members as necessary and pertinent. Risk areas, including risk areas that are identified in the course of quality improvement and credentialing processes, will be addressed as appropriate in periodic and special audits.

Risk areas identified from time to time by OIG, OMIG or other authorities will be addressed in The Wesley Community's auditing activities as appropriate.

The OIG Guidance has identified the following as areas of potential risk:

- Coding;
- Medical necessity;
- Non-covered services;
- Documentation, including legibility;
- Billing for services of physician extenders; and
- Improper inducements, kickbacks and self-referrals.

Risk areas identified by OMIG include:

- Reserved bed day billings;
- Base year cost calculations;
- Review of ancillary services included in the Medicaid rate;
- Medicaid rate Part B carve outs;
- Property/capital cost allocations;
- Temporary staffing costs;
- Review of resource utilization group (RUG-II) categorizations; and
- Net available monthly income (NAMI) calculations.

Employees, professional staff members executives, directors, and, to the extent applicable, vendors and agents will be required to cooperate with the compliance responsibilities and activities of The Wesley Community.

# IDENTIFYING, RESPONDING TO, INVESTIGATING, AND CORRECTING COMPLIANCE ISSUES

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Concerns identified by the Compliance Officer, Affected Individuals, or other sources will be reviewed by the Compliance Officer. Under the direction of the Compliance Officer, such concerns will be prioritized, investigations will be undertaken as warranted, and appropriate corrective action programs will be implemented. Response may include coordination with quality improvement processes and programs, where pertinent and appropriate.

Depending upon the nature of the concern, the Compliance Officer may consult with legal counsel to determine whether a significant and or reportable violation of applicable law may have occurred, and, if so, the appropriate measures to take.

Additional information and policies related to The Wesley Community's system of identifying, preventing, responding to, and resolving actual and potential compliance issues are found in additional elements/items of this Program.

The Wesley Community has established and implemented procedures and a system for promptly responding to compliance issues as they are raised. This system begins at the time that an Affected Individual discloses the concern to the Compliance Officer, a member of the Compliance Committee, or the Affected Individual's direct supervisor(s). The Wesley Community will promptly and thoroughly investigate any suspected violation and take appropriate disciplinary action if warranted. Investigations may be conducted internally by the Compliance Officer or other parties as deemed appropriate. Affected Individuals are required to cooperate with the individual or individuals conducting an investigation of a suspected violation. Such cooperation may involve being interviewed by the individual or individuals conducting the investigation or supplying such individual or individuals with requested documentation. Failure to cooperate in an investigation of a suspected violation may result in disciplinary action being taken.

The Wesley Community also has procedures and a system in place for correcting compliance concerns and problems. As appropriate, corrective actions may include one or more of the following:

- Discipline of an employee up to and including termination;
- Retraining;
- Reporting and return of overpayments within 60 days of identification;
- Self-disclosure to the carrier intermediary or the OIG or OMIG;
- Revision of a The Wesley Community policy;
- Implementation of procedures, policies, or systems to reduce the potential for recurrence; or
- Modification of a relationship with an outside party, such as a billing company.

Where the concern or problem relates to the acts or omissions by an Affected Individual, the Compliance Officer or, as appropriate, the Compliance Committee member, will address the issue with the individual and use reasonable efforts (including investigation as necessary) to identify the root cause of the individual's failure to act in a manner required by law or this Program. The Affected Individual may also be subject to corrective or disciplinary action, which is determined based on the severity of the act and in accordance with The Wesley Community's policies and procedures.

In the event that the concern or problem relates to the feasibility or efficacy of a policy or procedure, (for example, if a policy under the Program failed to anticipate, detect, or prevent a problem) the Compliance Officer will review such policies and procedures to determine what changes, if any, should be modified to reduce the likelihood of recurrence. If such a Program failure or deficiency identified, the Program will be revised, if practicable, in a manner that minimizes the risk of future failures.

From time to time, but no less than annually, the Compliance Officer shall review relevant law and guidance to ensure the ongoing and compliance with the medical assistance program and related requirements. The Compliance Officer's review includes reviewing and monitoring applicable state and federal regulations (for example, those found in the Social Services Law and 18 NYCRR 521) and keeping current with all guidance or directives issued by state or federal agencies (including, for example, DOH, CMS, OMIG, and the OIG).

In the event the Compliance Officer identifies an area that is no longer in compliance or is no longer effective, the Compliance Officer will take action to modify the practice or policy that is to be revised.

**This Program will be revised and updated from time to time to reflect ongoing Program assessment, current compliance guidance, the requirements of regulatory agencies, and considerations of best practices.**

**This document is not intended to serve as an express or implied employment contract, nor shall it be construed to confer any right upon any individual. Its objective is to communicate current policies relating to the compliance efforts of The Wesley Community. The Board of The Wesley Community reserves the right to change, modify, or waive all provisions herein. Any questions or concerns should be forwarded to the Compliance Officer or any member of the Compliance Committee.**

**APPENDIX A  
FEDERAL FALSE CLAIMS ACT**

**A. False Claims and Penalties**

The Federal False Claims Act (“Act”) imposes civil liability upon any person (individual or entity) for knowingly making a false claim to the United States government (“Government”). Specifically, the Act sets forth seven circumstances for which civil liability will be imposed for false claims. These seven circumstances are:

1. To knowingly present, or cause to be presented, to the Government a false or fraudulent claim for payment or approval;
2. To knowingly make, use, or cause to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government;
3. To conspire to defraud the Government by getting a false or fraudulent claim allowed or paid;
4. To have possession, custody or control of property or money used, or to be used, by the Government and, intending to defraud the Government or to willfully conceal the property, to deliver or cause to be delivered, less property than the amount for which the person receives a certificate or receipt;
5. To authorize the making or delivery of a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, to make or deliver the receipt without completely knowing that the information on the receipt is true;
6. To knowingly buy, or receive as a pledge of an obligation or debt, public property from an officer or employee of the Government who lawfully may not sell or pledge the property; or
7. To knowingly make, use, or cause to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government;

The civil monetary penalty that can be imposed for a false claim under the Act is not less than \$11,803.00 and not more than \$23,607.00, **PLUS** three times the amount of damages which the Government sustained because of the false claim. A Court may impose a lesser penalty of not less than two times the amount of damages sustained by the Government where the Court finds the following:

1. The person committing the violation furnished governmental officials responsible for investigating false claims with all information known to the person about the violation within thirty (30) days after the date on which the person first obtained the information;
2. The person fully cooperated with any governmental investigation of the violation; and
3. At the time the person furnished the Government with the information about the violation, no criminal prosecution, civil action, or administrative action had been commenced with respect to the violation and the person did not have actual knowledge of the existence of an investigation into the violation.

The Act defines the term “Claim” and the terms “Knowing” and “Knowingly”. A Claim is defined for purposes of the Act as follows:

Claim includes any request or demand, whether under a contract or otherwise, for money or property which is made to a contractor, grantee, or other recipient if the United States government provides any portion of the money or property which is requested or demanded or if the Government will reimburse such contractor, grantee or other recipient of any portion of the money or property which is requested or demanded.

The terms “Knowing” and “Knowingly” are defined as:

That a person, with respect to information:

1. has actual knowledge of the information;
2. acts in deliberate ignorance of the truth or falsity of the information;  
or
3. acts in reckless disregard of the truth or falsity of the information,  
and no proof of specific intent to defraud is required.

In essence, civil monetary penalties may be imposed upon a person for making a false claim to the Government where the individual knows the information in the claim is false or acts in deliberate ignorance of the truth or falsity of the information in the claim or acts in reckless disregard of the truth or falsity of the information in the claim. Civil monetary penalties are imposed even where there is no specific intent to defraud the Government.

The Act applies to claims submitted under Medicare, Medicaid, other federal health care programs and other state health care programs funded, in whole or in part, by the federal government. Examples of false claims include, but are not limited to:

1. Filing a claim for payment knowing that the services were not provided or were medically unnecessary;
2. Submitting a claim for payment knowing that excessive charges are being billed;
3. Submitting a claim for payment knowing that a higher billing code which does not reflect the services provided is used;
4. Filing a claim knowing that the claim is for duplicate services.

The Act has been used as a basis to impose civil monetary penalties upon nursing homes in situations involving egregious substandard quality of care, that is, the resident’s condition is so bad that the services billed for could not have been provided.

#### **B. Civil Actions under the Act**

Enforcement of the Act is the responsibility of the United States Attorney General. However, private individuals have the ability to bring a civil action for a violation of the Act. These private actions are known as “Qui Tam” actions.

Qui Tam actions are brought by private individuals in the name of the Government. When the complaint in an action brought by a private individual is filed with the Court, it remains under seal for a period of sixty days and cannot to be served upon the defendants named therein until ordered by the Court. Under seal means that the action remains confidential and is not subject to disclosure. The private individual must serve a copy of the complaint and written disclosures of substantially all material evidence and information the individual possesses on the Government. Within sixty days of the Government’s receipt of the complaint and written disclosures, the Government shall either intervene and proceed with the action, in which case, the action shall be conducted by the Government, or notify the Court that it declines to take over the action, in which case, the private individual bringing the action shall have the right to proceed with the action.

If the Government elects to proceed with the action brought by a private individual, the private individual shall receive at least 15% but not more than 25% of the proceeds of the action or settlement of the claim, depending upon the extent to which the private individual contributed to the prosecution of the action. If the Government does not proceed with the action, and the private individual is successful in the action or settles the action, the private individual is entitled to an amount not less than 25% and not more than 30% of the proceeds of the action or settlement which shall be paid out of the proceeds of the action or settlement. In addition, the private individual is entitled to receive an amount for reasonable expenses necessarily incurred in the action plus reasonable attorneys’ fees and costs. On the other hand, if the private individual is

unsuccessful in prosecuting the action, the Court, upon a finding that the action was clearly frivolous, clearly vexatious or brought primarily for purposes of harassment, may award the defendant in the action its reasonable attorneys' fees and expenses. If the private individual in the action is a person who planned or initiated the violation of the Act, the Court, where appropriate, may reduce the amount of the award to the private individual. Moreover, if such private individual is convicted of a crime arising from his or her role in the violation, the person will not receive any share of the proceeds of the action.

A civil action under the Act may not be brought:

1. More than six years after the date on which the violation of the Act is committed; or
  2. More than three years after the date when facts material to the right of action are known or reasonably should have been known by an official of the Government charged with responsibility to act in the circumstances but in no event more than 10 years after the date on which the violation is committed,
- whichever occurs last.

**31 U.S.C. §3801 Et. Seq.**

31 U.S.C. §3801 imposes additional civil penalties for the filing of false claims or statements with the federal government. The term "Claim" is defined as:

Any request, demand or submission - -

(A) made to [the Government] for property, services or money (including money representing grants, loans, insurance or benefits);

(B) made to a recipient of property, services or money from [the Government] or to a party to a contract with [the Government] - -

(i) for property or services if the United States - -

(I) provided such property or services;

(II) provided any portion of the funds for the purchase of such property or services; or

(III) will reimburse such recipient or party for the purchase of such property or services; or

(ii) for the payment of money (including money representing grants, loans, insurance or benefits), if the United States - -

(I) provided any portion of the money requested or demanded; or

(II) will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(C) made to [the Government] which has the effect of decreasing an obligation to pay or account for property, services or money,

except that such term does not include any claim made in any return of tax imposed by the Internal Revenue Code of 1986.

The term "Statement" is defined as:

Any representation, certification, affirmation, document, record or accounting or bookkeeping entry made - -

(A) with respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(B) with respect to (including relating to eligibility for - -

(i) A contract with, or a bid or proposal for a contract with; or

(ii) A grant, loan or benefit from,

an authority, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan or benefit, or if the Government will reimburse such State, political subdivision or party for any portion of the money or property under such contract or for such grant, loan or benefit,

except that such term does not include any statement made in any return of tax imposed by the Internal Revenue Code of 1986.

Specifically, civil monetary penalties under 31 U.S.C. §3801 et. seq. will be imposed against:

1. Any person (individual or entity) who makes, presents, or submits, or causes to be made, presented or submitted, a claim that the person knows or has reason to know:

(A) is false, fictitious or fraudulent;

(B) includes or is supported by any written statement which asserts a material fact which is false, fictitious or fraudulent;

(C) includes or is supported by any written statement that:

(i) omits a material fact;

(ii) is false, fictitious or fraudulent as a result of such omission; and

(iii) is a statement in which the person making, presenting or submitting such statement has a duty to include such material facts; or

(D) Is for payment for the provision of property or services which the person has not provided as claimed; or

2. Any person who makes, presents or submits, or causes to be made, presented or submitted, a written statement that:

(A) The person knows or has reason to know:

(i) asserts a material fact which is false, fictitious or fraudulent; or

(ii) is false, fictitious or fraudulent as a result of such omission;

(B) in the case of a statement described in clause (ii) of subparagraph (A) is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact; and

(C) contains or is accompanied by an express certification or affirmation of the truthfulness or accuracy of the contents of the statement.

The term “knows or has reason to know” means that:

A person, with respect to a claim or statement - -

(A) has actual knowledge that the claim or statement is false, fictitious or fraudulent; or

- (B) acts in deliberate ignorance of the truth or falsity of the claim or statement; or
- (C) acts in reckless disregard of the truth or falsity of the claim or statement,

and no proof of specific intent to defraud is required.

Civil monetary penalties under 31 U.S.C. §3801 et. seq. are not more than \$11,803.00 for each false claim or statement. Also, in lieu of damages sustained by the federal government, an assessment of not more than twice the amount of such claim(s) may be imposed. An individual or entity against whom civil monetary penalties are sought under 31 U.S.C. §3801 et. seq. is entitled to notice, an opportunity for a hearing and judicial review.

### **ADDITIONAL CIVIL AND CRIMINAL PENALTIES AND EXCLUSIONS FOR FALSE CLAIMS**

In addition to the Act and 31 U.S.C. §3801 et. seq., the federal government may, pursuant to 42 U.S.C. §1320a-7a, impose civil monetary penalties for false claims. Such additional civil monetary penalties may be up to but not exceed \$21,113.00 for each item or service which is the subject of a false claim.

In addition to civil monetary penalties, the federal government may, pursuant to 42 U.S.C. §1320a-7, exclude an individual or entity from participation in federal and state health care programs (including Medicare and Medicaid) for certain false claims or actions. Generally, exclusion is mandatory in cases where the individual is convicted of a felony relating to health care fraud, otherwise, exclusion is permissive, that is, subject to the discretion of the Government.

Pursuant to 42 U.S.C. §1320a-7b, criminal sanctions may be imposed against an individual or entity for making or causing to be made false statements or representations. Specifically, criminal sanctions will be imposed against an individual or entity who:

1. Knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any application for any benefit or payment under a federal health care program;
2. At any time knowingly and willfully makes or causes to be made any false statement or representation of a material fact for use in determining rights to such benefits or payments;
3. Having knowledge of the occurrence of any event affecting (1) his/her initial or continued right to any such benefit, or (2) the initial or continued right to any such benefit or payment of any other individual in whose behalf he/she has applied for or is receiving such benefit or payment, conceals or fails to disclose such event with an intent fraudulently to secure such benefit or payment either in a greater amount or quantity than is due or when no such benefit or payment is authorized;
4. Having made application to receive any such benefit or payment for the use and benefit of another and having received it, knowingly and willfully converts such benefit or payment or any part thereof to a use other than for the use and benefit of such other person;
5. Presents or causes to be presented a claim for a physician's service for which payment may be made under a federal health care program and knows that the individual who furnishes the services was not licensed as a physician; or
6. For a fee knowingly and willfully counsels or assists an individual to dispose of assets (including by any transfer in trust) in order for the individual to become eligible for medical assistance under [Medicaid] if disposing of the assets results in the imposition of a period

of ineligibility for such assistance.

In addition, criminal sanctions will be imposed against any individual or entity who knowingly and willfully makes or causes to be made, or induces or seeks to induce the making of, any false statement or representation of a material fact with respect to the conditions or operations of any institution, The Wesley Community or entity in order that such institution, The Wesley Community or entity may qualify (either upon initial certification or upon recertification) as a hospital, critical access hospital, skilled nursing The Wesley Community, nursing The Wesley Community, intermediate care The Wesley Community for the mentally retarded, home health agency, or other entity for which certification is required under Medicare or a state health care program or with respect to information required to be provided under 42 U.S.C. §1320a-3a (disclosure requirements for other providers under Medicare Part B).

## NEW YORK STATE FALSE CLAIMS LAWS

### A. NY False Claims Act (State Finance Law §§187-194)

The NY False Claims Act closely tracks the federal False Claims Act. It imposes penalties and fines on individuals and entities that file false or fraudulent claims for payment from any state or local government, including health care programs such as Medicaid. The penalty for filing a false claim is \$6,000-\$12,000 per claim and the recoverable damages are between two and three times the value of the amount falsely received. In addition, the false claim filer may have to pay the government's legal fees.

The Act allows private individuals to file lawsuits in state court, just as if they were state or local government parties. If the suit eventually concludes with payments back to the government, the person who started the case can recover 25-30% of the proceeds if the government did not participate in the suit or 15-25% if the government did participate in the suit.

### B. Social Services Law, Section 366-b

Section 366-b of the Social Services Law makes it a Class A misdemeanor for any person who, with intent to defraud, does any of the following:

1. presents for allowance or payment any false or fraudulent claim for furnishing services or merchandise;
2. knowingly submits false information for the purpose of obtaining greater compensation than that to which he/she is legally entitled for furnishing services or merchandise; or
3. knowingly submits false information for the purpose of obtaining authorization for furnishing services or merchandise under the Medicaid program.

### C. Article 177 of the Penal Law

Article 177 of the Penal Law became effective November 1, 2006. Article 177 of the Penal Law establishes the crime of health care fraud. The crime of health care fraud in the fifth degree is a Class A misdemeanor and a person is guilty of this crime when:

With intent to defraud a health plan, [includes the State Medicaid program], he or she knowingly and willfully provides materially false information or omits material information for the purpose of requesting payment from a health plan for a health care item or service and, as a result of such information or omission, he or she or another person receives payment in an amount that he, she or such other person is not entitled to under the circumstances.

Health care fraud in the fourth degree is a Class E felony. A person is guilty of health care fraud in the fourth degree when the person commits the crime of health care fraud in the fifth degree on one or more occasions and the payment or portion of payment wrongfully received from a single health plan [including Medicaid] in a period of not more than one year, exceeds \$3,000 in the aggregate.

Health care fraud in the third degree is a Class D felony. Health care fraud in the third degree is committed where the wrongful payments exceed \$10,000 in the aggregate in a one-year period. Health care fraud in the second degree is a Class C felony and is committed where the wrongful payments exceed \$50,000 in the aggregate in a one-year period. Health care fraud in the first degree is a Class B felony and is committed where the wrongful payments exceed more than \$1,000,000 in the aggregate one year period.

Article 177 of the Penal Law provides for an affirmative defense for individuals serving as a clerk, bookkeeper, or other employee of a health care provider who, without personal benefit, was merely executing the orders of his or her employer or a superior employee generally authorized to direct his or her activities. The affirmative defense is not available to any employee charged with the active management and control, in an executive capacity, of the affairs of the corporation.

**D. 18 NYCRR Section 515.2**

It is an unacceptable practice under the Medicaid program for an individual or entity to submit false claims or false statements to Medicaid. False claims include:

1. Submitting, or causing to be submitted, a claim or claims for:
  - i. unfurnished medical care, services or supplies;
  - ii. an amount in excess of established rates or fees;
  - iii. medical care, services or supplies provided at a frequency or in amount not medically necessary; or
  - iv. amount substantially in excess of the customary charges or costs to the general public; or
2. Inducing, or seeking to induce, any person to submit a false claim.

False statements are:

- i. Making, or causing to be made, any false, fictitious or fraudulent statement or misrepresentation of material fact in claiming a medical assistance payment, or for use in determining the right to payment; or
- ii. Inducing or seeking to induce the making of any false, fictitious or fraudulent statement or misrepresentation of a material fact.

Individuals who have engaged in unacceptable practices under the Medicaid program are subject to one or more of the following sanctions:

1. Exclusion from the program for a reasonable time;
2. Censure;
3. Conditional or limited participation, such as requiring pre-audit or prior authorization of claims for all medical care, services or supplies, prior authorization of specific medical care, services or supplies, or other similar conditions or limitations.

In addition, the Department of Health may require the repayment of overpayments determined to have been made as a result of the unacceptable practice.

## **WHISTLEBLOWER PROTECTION**

**A. Federal False Claims Act**

No employee because of lawful acts done by the employee in furtherance of a civil action under the Act, whether brought by the Government or a private individual, including investigation for, initiation of, testimony for, or assistance in any such action maybe discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of such actions. Any employee who has been discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against in the terms and conditions of employment because of such lawful acts shall be entitled relief necessary to make the employee whole, including, reinstatement with the same seniority status such employee would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

## B. State Laws

Article 20-C of the New York Labor Law prohibits retaliatory action by employers. Section 740 of Article 20-C applies to all employers. Section 741 of Article 20-C applies to health care employers, including, but not limited to, providers licensed under Article 28 (i.e., hospitals, nursing homes and diagnostic and treatment centers) and Article 36 (i.e., long term home health care programs, certified home health care agencies, and licensed home care service agencies) of the Public Health Law. In addition, the New York False Claims Act provides additional protection to employees.

### I. Section 740

Under Section 740 an employer is prohibited from taking any retaliatory action (an adverse action taken by an employer or his or her agent to discharge, threaten, penalize, or in any other manner discriminate against any employee or former employee exercising his or her rights under this section, including (i) adverse employment actions or threats to take such adverse employment actions against an employee in the terms of conditions of employment including but not limited to discharge, suspension, or demotion; (ii) actions or threats to take such actions that would adversely impact a former employee's current or future employment; or (iii) threatening to contact or contacting United States immigration authorities or otherwise reporting or threatening to report an employee's suspected citizenship or immigration status or the suspected citizenship or immigration status of an employee's family or household member, as defined in subdivision two of section four hundred fifty-nine-a of the social services law, to a federal, state, or local agency) against an employee because the employee does any of the following:

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

With respect to disclosures to a public body only, protection against retaliatory actions is unavailable unless the employee has made a good faith effort to notify his or her employer by bringing the activity, policy or practice to the attention of a supervisor of the employer and afforded the employer a reasonable opportunity to correct the activity, policy or practice. Such employer notification shall not be required where: (a) there is an imminent and serious danger to the public health or safety; (b) the employee reasonably believes that reporting to the supervisor would result in a destruction of evidence or other concealment of the activity, policy or practice; (c) such activity, policy or practice could reasonably be expected to lead to endangering the welfare of a minor; (d) the employee reasonably believes that reporting to the supervisor would result in physical harm to the employee or any other person; or (e) the employee reasonably believes that the supervisor is already aware of the activity, policy or practice and will not correct such activity, policy or practice.

An employee who has been subject to a retaliatory action may institute a civil action for the following relief within two years after the alleged retaliatory action was taken:

- (i) An injunction to restrain continued violation of Section 740;
- (ii) Reinstatement of the employee to the same position held before the

- (iii) Retaliatory action, or to an equivalent position; or front pay in lieu thereof;
- (iii) Reinstatement of full fringe benefits and seniority rights;
- (iv) Compensation for lost wages, benefits and other remuneration;
- (v) Payment by the employer of reasonable costs, disbursements and attorneys' fees;
- (vi) A civil penalty of an amount not to exceed \$10,000; and/or
- (vii) Payment by the employer of punitive damages, if the violation was willful, malicious or wanton.

If the Court determines that a civil action under Section 740 was without basis in law or fact, the Court, in its discretion, may award reasonable attorneys' fees and court costs and disbursements to the employer.

## II. **Section 741**

Under Section 741, an employer is prohibited from taking retaliatory action (discharge, suspension, demotion, penalization or discrimination against an employee, or other adverse employment action taken against an employee in terms and conditions of employment) against an employee because the employee does any of the following:

- (i) discloses or threatens to disclose to a supervisor, to a public body, to a news media outlet, or to a social media forum available to the public at large, an activity, policy or practice of the employer or agent that the employee, in good faith, reasonably believes constitutes improper quality of patient care ("improper quality of patient care" means any practice, procedure, action or failure to act of an employer which violates any law, rule, regulation or declaratory ruling adopted pursuant to law, where such violation relates to matters which may present a substantial and specific danger to public health or safety or a significant threat to the health of a specific patient) or improper quality of workplace safety ("improper quality of workplace safety" means any practice, procedure, action or failure to act of an employer which violates any law, rule, regulation, or declaratory ruling adopted pursuant to law where such violation relates to matters which may present an unsafe workplace environment or risk of employee safety or a significant threat to the health of a specific employee); or
- (ii) objects to, or refuses to participate in any activity, policy or practice of the employer or agent that the employee, in good faith, reasonably believes constitutes improper quality of patient care or improper quality of workplace safety.

The protections under Section 741 are not available to an employee unless the employee has brought the improper quality of patient care or improper quality of workplace safety to the attention of a supervisor and has afforded the employer a reasonable opportunity to correct such activity, policy or practice. However, the inapplicability of Section 741 for failure to provide an employer an opportunity to correct does not apply to disclosures or threatened disclosures to a supervisor or public body where the improper quality of patient care or improper quality of workplace safety presents an imminent threat to public health or safety or to the health of a specific patient and the employee reasonably believes in good faith that reporting to a supervisor would not result in corrective action.

An employee may bring a civil action under Section 740 for the relief identified in Section 740. In addition to the specific relief identified in Section 740, if the Court determines that a health care employer acted in bad faith in a retaliatory action under Section 741, the Court may assess a civil penalty of an amount not to exceed \$10,000 against the health care employer which is to be paid to the Improving Quality of Patient Care Fund established under the State Finance Law.

### III. **NY False Claim Act (State Finance Law §191)**

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

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## APPENDIX B

### Report of Potential Non-Compliance

*Please complete this form and forward it directly to the Compliance Officer for review.*

#### Part I

**Date and Time of Report:** \_\_\_\_\_

Name and Department of individual originating report (unless you wish to remain anonymous):  
\_\_\_\_\_

**Subject of Report:** \_\_\_\_\_

Parties involved: Name of Resident: \_\_\_\_\_

Name of Employees: \_\_\_\_\_

Any other people: \_\_\_\_\_

**Date(s) of Alleged Non-Compliance:** \_\_\_\_\_

**Location/Department(s) Involved:** \_\_\_\_\_

**Witness name(s) and department(s) involved (unless witnesses wish to remain anonymous):**  
\_\_\_\_\_

**Summary of Report (please include time line of events):**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please attach additional information or supporting documents, if necessary.

#### Part II (To be completed by the Compliance Officer)

**Date and time report received:** \_\_\_\_\_

**Report Received by:**  Compliance Officer  Department Manager or Supervisor

Reporting Mechanism: Phone  Letter  Verbal

Email:  Fax:  Other

Note: The Corporate Compliance Officer will maintain this report in a confidential manner to the extent possible. If you choose to remain anonymous, the Corporate Compliance Officer may not be able to notify you directly of the outcome of any investigations that are undertaken. However, you may contact the Corporate Compliance Officer directly at (518) 691-1402 or [compliance@thewesleycommunity.org](mailto:compliance@thewesleycommunity.org) if you have further questions.

## COMPLIANCE CERTIFICATION

I certify that I have received the Compliance Manual and that The Wesley Community's Compliance Program, including Standards of Conduct, has been explained to me. I have been given an opportunity to ask questions. I promise to comply with the terms of The Wesley Community's Compliance Program and I understand that violation of these terms may lead to disciplinary action, up to and including the termination of my employment or the termination or non-renewal of staff privileges.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

(Print Name)

Date: \_\_\_\_\_