



COUNTY OF ROCKLAND
OFFICE OF THE COUNTY EXECUTIVE

Allison-Parris County Office Building
New City, New York 10956

Tel. (845) 638-5122
Fax. (845) 638-5426

C. SCOTT VANDERHOEF
County Executive

June 23, 2011

To: Dr. Joan Facelle, Commissioner
Department of Health

Richard Maloney, Commissioner
Department of Hospitals


MaryAnn Walsh-Tozer, Commissioner
Department of Mental Health

From: Scott Vanderhoef
County Executive

Re: **Executive Order No. 04-2011 Amending Executive Order No. 2-2003**

By this Executive Order, I hereby am revising the Corporate Compliance Program for the Department of Hospitals, the Department of Health, and the Department of Mental Health, which was established by Executive Order No. 2-2003. All employees of these Departments, which include all Commissioners, officers, staff, board members, consultants, contractors, agents, affiliated physicians, and any other persons who represent these Departments in any capacity, are required to read and fully comply with the revised standards set forth therein.

Thank you.


Scott Vanderhoef
COUNTY EXECUTIVE

Attachment

CORPORATE COMPLIANCE PROGRAM

I. INTRODUCTION	5
A. Basic Rules of Conduct for County of Rockland Employees	6
B. Reporting of Possible Legal or Ethical Violations	7
II. CODE OF CONDUCT	8
A. Conflicts of Interest	8
1. Relationships With Suppliers, Customer, and Other Healthcare Entities or Providers	8
a. Ownership Interests In and Financial Relationships With Suppliers or Another Healthcare Entity or Provider	9
b. Supplier and Customer Gifts to Employees	10
c. Annual Letter to Suppliers, Vendors, and Customers	10
2. Performance of Work or Activities Unrelated to County of Rockland Employment	11
3. Misappropriation of Business Opportunities	11
4. Relationships Among County of Rockland Employees	11
B. Fraud and Abuse	11
1. Overview of Law and Regulations	11
a. Federal Anti-Kickback Statute	12
i. Background	12
ii. Avoiding Anti-Kickback Violations: Safe Harbors, Fraud Alerts and Advisory Opinions	13
b. The Stark Self-Referral Statute	14
i. Background	14
ii. Avoiding Stark Self-Referral Violations: Statutory Exceptions and Advisory Opinions	15
c. The False Claims Act	15
i. Background	15
ii. OMIG's Summary of the Relevant Statutes	17
iii. Avoiding FCA Violations: OIG/OMIG Work Plans, OIG/OMIG Compliance Program Guidance and Other OIG/OMIG Documents	17

d.	Additional Relevant Fraud and Abuse Laws	18
2.	Specific Business Transactions or Relationships Involving Fraud and Abuse Issues	18
a.	Patient Referrals	18
b.	Arrangements Involving Physicians	19
c.	Cost Reporting	20
d.	Coding, Billing and Reimbursement Matters	20
C.	Coding, Billing and Claims Development and Submission	20
1.	General Policy	20
2.	Specific Activities Involving Coding, Billing and Claims Development and Submission	21
a.	Misrepresenting Diagnostic Information or Services Rendered - Overcharging or Up-Coding	21
b.	Unbundling/Bundling of Services	21
c.	Billing Only for Services Rendered or Items Provided	21
d.	Duplicate Billing	22
e.	Medical Necessity	22
f.	Medicare as Secondary Payor (“MSP”)	22
g.	Complete, Accurate and Truthful Claims	22
h.	Cost Reporting	22
i.	Charge Master	23
j.	Credit Balances	23
3.	Issues Specific to Certain County Departments or Services	23
a.	County Laboratory Services	23
b.	County Radiology Services	23
D.	Pharmaceuticals and Controlled Substances	23
E.	Environmental Health and Safety	24
F.	Use and Protection of County of Rockland Property and Other Assets	25
G.	Disposition of County of Rockland Property and Other Assets	25
H.	Expenditures To Be Documented Properly	25

I. Restrictions on Personal Letters to Elected Officials or Political Bodies	26
J. Competitive Practices and Antitrust Concerns	26
K. Relationships with Government Authorities and Government Investigations	27
1. Conflict of Interest Situations	27
2. Investigations by Government Agencies	27
a. Fraud Investigator Requesting an Interview	27
b. Search Warrants	28
c. Subpoenas and Other Legal Documents	29
d. Preservation of Evidence	29
L. Political Activities and Contributions	29
M. Fundraising	29
N. Confidential Information	30
1. General Policy	30
a. Health Care Information and Records	30
b. Financial Information and Records	31
c. Electronic Data and Information	31
d. Use of Confidential Information Owned by Others	31
2. Record Retention	32
O. Complying With Anti-Discrimination Laws and Rules Against Harassment	32
P. Employment and Retention of Individuals Excluded from Participation in Federal Health Care Programs	32
III. ADMINISTRATION OF THE CORPORATE COMPLIANCE PROGRAM	33
A. Oversight Responsibilities	33
B. Employee Training	33
C. Monitoring and Auditing	33
D. Reporting System	33
E. Enforcement and Discipline	35
E. Detection and Prevention of Program Violations	37

EXHIBITS

Exhibit A – Annual Compliance Questionnaire (Employees of the Departments of Health, Hospitals and Mental Health Only)	38
Exhibit B – Annual Certificate of Compliance (Employees of the Departments of Health, Hospitals and Mental Health Only)	43
Exhibit C – Departure From County Employment Questionnaire (Employees of the Departments of Health, Hospitals and Mental Health Only)	44
Exhibit D – Annual Confidentiality Statement (Employees of the Departments of Health, Hospitals and Mental Health Only)	45
Exhibit E – Annual Letter to Suppliers, Vendors, and Customers	46
Exhibit F – OMIG’s Summary of Federal and New York State Statutes Relating to Filing False Claims	47

**THE COUNTY OF ROCKLAND DEPARTMENTS OF HEALTH,
HOSPITALS, AND MENTAL HEALTH**

CORPORATE COMPLIANCE PROGRAM

I. INTRODUCTION

The County of Rockland and its Departments of Health, Hospitals, and Mental Health (collectively "County of Rockland") are proud of their long tradition of ethical and responsible conduct. The County of Rockland is committed to conducting its business lawfully and ethically. Any person who represents the County of Rockland in any capacity, such as members of the Board of Health, Board of Governors, or Community Services Board, an officer of the County of Rockland, a member of the Medical Staff, a consultant, or an employee, is expected to adhere to this high standard whenever he or she acts on behalf of the County of Rockland, whether dealing with other employees, with patients and their families, with vendors, with government regulators, or with the general public. Violations of legal or ethical requirements jeopardize the welfare of the County of Rockland, its employees and patients, and the communities it serves.

PLEASE NOTE: FOR EASE OF READING, ALL REFERENCES IN THIS DOCUMENT TO "EMPLOYEE" SHALL INCLUDE ALL COMMISSIONERS, OFFICERS, EMPLOYEES, BOARD MEMBERS, CONSULTANTS, CONTRACTORS, AGENTS, AFFILIATED PHYSICIANS AND ANY OTHER PERSONS WHO REPRESENT THE COUNTY OF ROCKLAND IN ANY CAPACITY.

The Corporate Compliance Program is intended to define the conduct expected of employees, to provide guidance on how to resolve questions regarding legal and ethical issues, and to establish a mechanism for the reporting of possible violations of law or ethical principles.

The Corporate Compliance Program is comprised of the following components:

- The Code of Conduct, which establishes the general standards and policies and procedures with which all must comply. Each employee is required to read, understand, and fully comply with the standards established by the Code of Conduct.
- One (1) Compliance Officer ("CO") with responsibility for administering the Program. The members of the Compliance Committee shall rotate serving as the CO. Each CO will serve a term of one (1) year.
- A Compliance Committee to advise the CO and to assist in the implementation of the Corporate Compliance Program. The Compliance Committee shall consist of one (1) compliance officer from each of the three (3) Departments. The County Executive also may designate certain employees to serve on the Compliance Committee. The members of the Compliance Committee shall meet on a quarterly basis.

- The identity of the CO and the members of the Compliance Committee shall be posted on each Department's website.
- A Compliance Helpline through which employees are able to confidentially report to the CO any potential violations of law or deviation from compliance standards. The Compliance Helpline number is (845) 364-3700.
- Monitoring and auditing systems to prevent and detect any improper or illegal activity.
- Disciplinary guidelines that will be enforced whenever an employee has been found to have violated the Corporate Compliance Program standards or any applicable law or regulation.
- A system to ensure that individuals who have been sanctioned from participation in federal health care programs are not hired for or retained in positions with discretionary authority.

A. Basic Rules of Conduct for County of Rockland Employees

1. Comply with All Laws and Regulatory Requirements

- Employees are required to obey all federal, state and local laws and regulations that pertain to the County of Rockland.
- Employees are expected to be familiar with the basic legal requirements that are relevant to their duties. Employees can learn about the laws and regulations that apply to their work assignments through in-service and outside training programs, speaking with supervisors, reviewing County of Rockland policies, and asking questions of the CO.
- Employees subject to licensure and certification requirements are expected to comply with such requirements.
- Employees may not be excepted from the standards established in the Code of Conduct without the express written permission of the CO.
- Employees who violate the standards of the Code of Conduct will be subject to disciplinary action, up to and including termination, and possible criminal prosecution.
- The performance evaluation criteria of managerial employees will include adherence to and implementation of the Code of Conduct.

2. Comply with All County of Rockland Policies and Procedures

- Employees must comply with any and all County of Rockland policies and procedures that pertain to their work assignments and to their conduct.

3. Comply with All Patient Care Policies and Patient Rights Statements

- Employees must comply with the standards set forth in the County of Rockland's Patient Rights Statement.

- Employees must comply with all patient care policies, including but not limited to policies regarding patient rights, patient complaints and the confidentiality of patient records and information.

4. Keep Accurate Records

- Employees are expected to comply with County of Rockland and government requirements regarding record keeping.
- All communications, whether among County of Rockland employees or with outside agencies, must be truthful. No one may alter or falsify information on any record or document.
- The retention and destruction of documents must be handled in accordance with applicable County of Rockland policies and procedures.

5. Behave Ethically

- Every employee is expected to adhere to high ethical standards whenever he or she acts on behalf of the County of Rockland.

6. Be Forthright with Accrediting Bodies and Government Agencies

- Employees are expected to deal openly and honestly with representatives of accrediting bodies and government agencies.
- Employees will not take any action to mislead an investigator or an accreditation or survey team.

7. Comply with the Procurement Policy

- Employees are expected to be loyal to the County of Rockland, to avoid using their positions for personal gain, and to comply with the County of Rockland's Procurement Policy.

8. Report Possible and Actual Violations

- Employees are expected to report any potential or actual violations of law or ethical standards in accordance with the procedure set forth in the Code of Conduct.

B. Reporting of Possible Legal or Ethical Violations

1. Where to Report

Reports by an employee of possible violations of law or ethical standards should be made to the CO. These reports can be made confidentially through the Compliance Helpline. If the employee has concerns about this approach, reports can be made directly to the employee's supervisor or the Director, Deputy Commissioner or Commissioner of the Department.

2. What to Report

An employee need not be absolutely certain that a violation has occurred before making a report. A reasonable belief that a violation has occurred (or may occur) is sufficient. Reporting enables the County of Rockland to quickly investigate potential problems and to take prompt action to deal with them.

3. Consequences of Reporting

Employees will not be disciplined, intimidated or retaliated against for reports made in good faith. However, employees who have made reports falsely or for improper purposes will be subject to discipline. In addition, employees participating in violations of the Corporate Compliance Program will not be immune by reporting such wrongdoing. The identity of an employee making a report will be closely guarded and will be protected to the degree permitted by law.

4. Compliance Helpline

Employees will be able to report potential or actual improper activities at any time by calling the County of Rockland Compliance Helpline at (845) 364-3700. Calls to the Compliance Helpline are confidential and can be anonymous if the caller requests. The CO is responsible for the management of the Compliance Helpline. The CO and/or his or her designee will coordinate the investigation of all reports called into the Compliance Helpline and ensure that proper follow-up actions are taken, if necessary.

II. CODE OF CONDUCT

A. Conflicts of Interest

It is the County of Rockland's policy that all County of Rockland employees act in the best interests of the County of Rockland at all times and not engage in any activity in which private interests conflict with County of Rockland interests. Generally speaking, a conflict of interest exists when an obligation or a situation resulting from an individual's personal activities or financial affairs may influence his or her judgment in the performance of his or her duty to the County of Rockland. There may well be cases in which an apparent conflict of interest is more theoretical than real, but it is important to resolve such doubtful cases promptly. For the protection of both the County of Rockland and the individual, it is essential that potential conflicts be fully disclosed and resolved before they occur. In all cases, the individual should fully disclose the matter to the CO and any other appropriate member of the County of Rockland administration.

1. Relationships with Suppliers, Customers, and Other Healthcare Entities or Providers

A conflict of interest may exist when an employee or one of his or her close relatives directly or indirectly owns an interest in, has a financial relationship with, or serves as a director, commissioner, officer, employee, consultant, or agent to another healthcare entity or provider, or has current or prospective business with the County of Rockland as a supplier or contractor. The

following guidelines illustrate the County of Rockland's expectations of its employees with regard to conflicts of interests involving suppliers and other healthcare entities or providers.

a. Ownership Interests In and Financial Relationships With Suppliers or Another Healthcare Entity or Provider

Purchase of Goods or Services by the County of Rockland From an Employee or Close Relative of an Employee

It is the general policy of the County of Rockland that it will not enter into business arrangements with companies in which an employee, or close relative of an employee, has an ownership interest, or with which an employee or close relative of the employee has a financial relationship. However, the County of Rockland recognizes that there may be occasional situations in which this general policy may not serve the best interests of the County of Rockland. Accordingly, in the event an employee, or a close relative of an employee, owns an interest in, or has a financial relationship with, a company that desires to provide goods or services to the County of Rockland, then the following rules shall apply:

- The employee shall disclose the nature of the ownership interest or financial relationship to the CO;
- The CO, in conjunction with the Compliance Committee, shall review such factors as the CO and Compliance Committee deem relevant, including, without limitation, the nature of the employee's or family member's relationship with the company, the quality of the goods or services offered by the company, the price thereof, and the reputation of the company in the community; and
- The matter shall be presented to the County Executive, who shall determine whether the County of Rockland shall enter into any business arrangement with the company

Working for or Providing Services to a Supplier or Another Healthcare Entity or Provider

It is the policy of the County of Rockland that an employee may not work for, or provide services to, a supplier. It is also the general policy of the County of Rockland that an employee may not work for, or provide services to another healthcare entity or provider. However, in the event an employee wishes to work for or provide services to another healthcare entity or provider, the employee must first disclose the nature of the proposed arrangement to the County Executive and obtain the County Executive's written approval.

Being a Partner of, or Investor in, a Supplier, Consultant, or Another Healthcare Entity or Provider

The opportunity for County of Rockland employees to invest in a business venture with a County of Rockland consultant, supplier or another healthcare entity or provider may present itself. Because such relationships may create actual conflicts of interest, or the appearance of conflict, it is the County of Rockland's policy that no employee may have an ownership interest in, or a financial relationship with, a County of Rockland consultant, supplier, or another healthcare

entity or provider. For example, if an employee were to invest in a business venture with a County of Rockland supplier, it could cause the employee to exert an improper influence within the County of Rockland on behalf of such supplier. Influence could be directed toward the selection of suppliers and prices paid for goods or services.

In order to preserve the integrity of the County of Rockland's practices with respect to the selection of suppliers, it is the County of Rockland's policy that any relationship that would create even the appearance of a conflict of interest, such as a County of Rockland employee in a business transaction with a supplier of the County of Rockland, is prohibited.

b. Supplier and Customer Gifts to Employees

A County of Rockland employee is never to accept anything of value from someone doing business with the County of Rockland if the gratuity is offered, or appears to be offered, in exchange for any type of advantage or favorable treatment. In addition, it is the County of Rockland's policy that no gift or gratuity in any form may be accepted by a County of Rockland employee or family member unless the gift is a commonly distributed item of modest value given for advertising or promotional purposes, or is of modest value and consistent with local business custom. Gifts over \$25 from one individual or organization in the course of one year must be reported to the CO. The rules of this section relating to gifts from suppliers shall not conflict with, but shall be in addition to any prohibition in the County Code of Ethics (Laws of Rockland County §§ 66-1 – 66-18) and the County Procurement Policy, which is available at <http://www.co.rockland.ny.us/departments/purch/purch20/index.php?p=procurementPolicy>.

County of Rockland employees are never to solicit gifts, gratuities, tickets or entertainment from suppliers or customers regardless of their value. This does not include fund raising activities sponsored by the County of Rockland.

County of Rockland employees may not accept for personal use any supplier or customer property, airplane transportation, travel packages, seminars, or similar favors without disclosure to the CO and the prior written approval of the County Executive.

For further information, please consult the County Code of Ethics (Laws of Rockland County §§ 66-1 – 66-18).

c. Annual Letter to Suppliers, Vendors, and Customers

Each year, the Director of Purchasing will post on the Purchasing Department's website an annual letter to its suppliers, vendors, and contractors explaining the County of Rockland's policy regarding business gifts (**see Exhibit E**). In addition, each year, the CO will forward to the Commissioners of the Departments of Health, Hospitals and Mental Health a letter explaining the County of Rockland's policy regarding business gifts (**see Exhibit E**). The Departments will attach a copy of this annual letter to all of their contracts and also will post a copy of this letter on their bulletin boards.

2. Performance of Work or Activities Unrelated to County of Rockland Employment

A conflict of interest may exist when an employee undertakes to engage in an independent business venture or to perform work or services for another business or organization to the extent that the activity prevents that employee from devoting the time and effort required to adequately and professionally fulfill his or her responsibilities to the County of Rockland. Consequently, County of Rockland employees may not engage in certain employment and work activities. Outside work activities that are permitted under the Corporate Compliance Program must comply with the following guidelines:

- All off-duty work and outside activities must be wholly performed on the employee's personal time through the use of his or her own facilities, resources and supplies. More specifically, the employee may not make use of County of Rockland owned property or resources in performing the outside work.
- Performance of off-duty work and outside activities must not interfere with or prevent the employee from devoting the requisite time and effort necessary to fulfill the employee's duties and obligations as a full-time (or part-time) employee of the County of Rockland.

3. Misappropriation of Business Opportunities

A conflict of interest may exist when an employee, without the knowledge and consent of the County of Rockland, appropriates to himself or herself, or to another person or organization, the benefit of any business venture, opportunity, or potential opportunity which such employee learns about or develops in the course of the employee's employment and which is related to any current or prospective business of the County of Rockland. The County of Rockland prohibits the misappropriation of business opportunities by its employees.

4. Relationships Among County of Rockland Employees

Issues may arise with regard to how employees deal with one another. One issue involves gift-giving among colleagues for certain occasions. No one should ever be compelled, or feel compelled, to give a gift to another. Any gifts given or received should be appropriate to the circumstances. A lavish gift to anyone in a supervisory role would be a violation of the County of Rockland's policies and procedures.

B. Fraud and Abuse

The dramatic rise in recent years of federal and state government fraud and abuse investigations of health care providers and the substantial monetary settlements involving health care fraud cases has resulted in the emergence of corporate compliance programs for health care entities.

1. Overview of Laws and Regulations

The primary areas of concern for health care providers are the federal Anti-Kickback Statute, the federal Stark Self-Referral Statute and federal False Claims Act, as well as their state counterparts. Health care providers must also be concerned about penalties under the federal civil

monetary penalties section, which include exclusion from federal health care programs. These laws are summarized below.

a. Federal Anti-Kickback Statute

i. Background

This very important criminal statute, which can be found at 42 U.S.C. § 1320a-7b, states as follows:

Whoever *knowingly and willfully* solicits or receives [or offers or pays] any remuneration (including any kickback, bribe or rebate) directly or indirectly, overtly or covertly, in cash or in kind, in return for:

- referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program,¹ or
- purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing or ordering any good, facility, service or item for which payment may be made in whole or in part under a Federal health care program,

shall be guilty of a felony and upon conviction thereof, shall be fined not more than \$25,000² or imprisoned for not more than 5 years, or both.

In practical terms, what this means is whenever a Medicare or Medicaid claims submitting entity (for example, a hospital) provides **anything of value** (e.g., referral fees, free training or other services, low interest or no interest loans, payment of travel expenses or conference expenses, excessive medical director fees, the opportunity to generate fees, etc.) to a source of Medicare or Medicaid, to a physician, or to a person or entity that can generate federal health care program business (for example, a management services organization that provides marketing services), the Anti-Kickback Statute is implicated. Whether the statute is violated depends on the intent of the parties. The courts have held that the statute covers any arrangement where even *one* purpose of the “remuneration” (i.e., the something of value) was to ensure current referrals or to induce further referrals, regardless of the existence of other permissible purposes. As this is a criminal statute, the Government is required to prove culpability beyond a reasonable doubt.

Penalties for conviction under the Anti-Kickback Statute include imprisonment for up to 5 years, fines of up to \$25,000 and possible exclusion from the Medicare and Medicaid programs. In addition, the Federal Government is authorized to impose a civil monetary penalty of up to three times the illegal remuneration plus \$10,000 to \$50,000 depending upon the type of violation. This is significant because the burden of proof under the civil monetary penalties section, 42

¹ “Federal Health Care Programs” include any program funded in whole or part by the U.S. Government, with the exception of the Federal Employee Health Benefit Program (5 U.S.C. § 8901).

² Note that on January 5, 2011, a bill was introduced in the U.S. House of Representatives seeking to increase the criminal fines and sentences for felonies involving Medicare fraud and abuse as well as the civil monetary penalties contained in §§ 1320a-7b and 1320a-7a, respectively.

U.S.C.A. § 1320a-7a, is a mere preponderance of the evidence, as compared with the criminal statute, which requires proof beyond a reasonable doubt. Consequently, the Government may now be more likely to pursue anti-kickback prosecutions given the lower standard under § 1320a-7a.

Examples of the types of actions that could violate the Federal Anti-Kickback Statute (and similar state laws):

- Routine waiver of co-payments or deductibles;
- Offering or paying anything of value to an individual to induce him or her to refer patients to the County of Rockland (e.g., providing free office space to a physician who is a potential referral source);
- Offering or paying anything of value to a patient or referral source in marketing the services of the County of Rockland;
- Soliciting or receiving anything of value for the referral of County of Rockland patients to others (e.g., requiring a home health agency to pay the County of Rockland a monthly fee to ensure referrals of County of Rockland patients to the agency); or
- Receiving free goods of a kind other than the same goods when purchasing products.

ii. Avoiding Anti-Kickback Violations: Safe Harbors, Fraud Alerts, and Advisory Opinions

Safe Harbors

In order to ensure that the Anti-Kickback Statute would not prohibit certain acceptable business arrangements between health care providers, the Office of the Inspector General (OIG) of the Department of Health and Human Services (HHS) promulgated various safe harbors that, if fully complied with, immunize the parties to the agreement from criminal and civil prosecution. *It should be noted, however, that compliance with a safe harbor is voluntary, i.e., even if an arrangement does not fulfill the requirements of an applicable safe harbor, the arrangement is not illegal per se.* In such a case, the parties to an arrangement have the option of seeking an advisory opinion from the OIG. The purpose of an advisory opinion is to provide the parties with authoritative guidance as to the legality of a proposed arrangement. Advisory opinions are binding on the parties who request them and also cost money to obtain; therefore they are not always a viable option. Thus, the remaining option when an arrangement does not clearly qualify for safe harbor protection is to consult with an experienced health care attorney who can knowledgeably evaluate the proposed arrangement.

Special Fraud Alerts

In an effort to provide additional guidance to the health care industry on violations of the Anti-Kickback Statute, the OIG and the New York State Office of the Medicaid Inspector General (OMIG) periodically disseminate Special Fraud Alerts which address specific trends of health care fraud and certain practices of an industry-wide character that raise anti-kickback and other Federal law concerns (e.g., false claims issues). Special Fraud Alerts, are available on OIG's and

OMIG's websites at <http://oig.hhs.gov/fraud/fraudalerts.asp> and <http://www.omig.ny.gov/data/content/blogsection/8/199/>, respectively. The CO and the Compliance Committee are responsible for: (1) reviewing all published Special Fraud Alerts to determine if they apply to any current County of Rockland operations; (2) keeping abreast of the publication of future Special Fraud Alerts; and (3) disseminating the information in both past and future Special Fraud Alerts to appropriate individuals and departments throughout the County of Rockland.

Advisory Opinions

Finally, as discussed previously, a party who has a concern regarding the anti-kickback implications of an existing or proposed arrangement of which such party is a part may submit a request to the OIG for an advisory opinion. The regulations regarding advisory opinions are detailed at 42 C.F.R. § 1008 *et seq.* Although only the parties that are the subject of an advisory opinion may rely on it, advisory opinions provide guidance regarding the OIG's interpretation of the Anti-Kickback Statute. All advisory opinions are posted on the OIG's website at <http://oig.hhs.gov/fraud/advisoryopinions/opinions.asp>. County of Rockland employees involved in transactions that might implicate the Anti-Kickback Statute are encouraged to review such opinions.

b. The Stark Self-Referral Statute

i. Background

As part of the Omnibus Budget Reconciliation Act of 1989, Congress enacted what is commonly known as "Stark I." This law prohibited physicians (defined to include doctors of medicine, osteopathy, dental surgery, dental medicine, podiatry, optometry and certain qualified chiropractors) from referring Medicare patients for clinical laboratory services to clinical laboratories with which the physician or his or her immediate family member (an "IFM") had a financial interest. Stark I became effective January 1, 1992.

Subsequently, as part of the Omnibus Budget Reconciliation Act of 1993, Congress enacted what is commonly known as "Stark II." Stark II broadened the Stark I prohibition on referrals. The regulations implementing Stark I became effective in August 1995 and, by their nature, applied to only clinical laboratory referrals. In January 1998, HCFA promulgated proposed regulations to implement Stark II and on January 4, 2001, published the Final Rule in the Federal Register. Stark I and Stark II, hereinafter "the Stark Self-Referral Statute," codified at 42 U.S.C. § 1395nn, prohibit a physician from referring a Medicare or Medicaid patient for certain "designated health services" to an entity with which the physician or his or her immediate family member has a "financial relationship." A "financial relationship" exists when the physician (or IFM) has an ownership or investment interest through equity, debt, or other means and includes an interest in an entity that hold an ownership or investment in an entity providing health services. In the event a physician has made a prohibited referral to an entity, neither the physician nor the entity may seek reimbursement from *anyone* (e.g., the patient, Medicare or another third-party payor) for the services provided to the patient.

The Stark Statute has an extremely broad scope, due in large part to how certain words and phrases are defined. Of special note is the definition of designated health services (“DHS”), which includes the following: (1) clinical laboratory services; (2) physical therapy services; (3) occupational therapy services; (4) radiology services, including MRIs, CAT scans and ultrasound services; (5) radiation therapy services and supplies; (6) durable medical equipment and supplies; (7) parenteral and enteral nutrients, equipment and supplies; (8) prosthetics, orthotics and prosthetic devices and supplies; (9) home health services; (10) outpatient prescription drugs; (11) inpatient and outpatient hospital services; and (12) outpatient speech-language pathology services. The consequences of violating the Stark self-referral prohibitions include denial of payment for services provided pursuant to an unlawful referral; refunding of any payments already collected as a result the prohibited referral; a civil money penalty of up to \$15,000 for *each* bill or claim for a service a person knows or should know is for a service for which payment may not be made; a civil money penalty of up to \$100,000 for participation in a circumvention scheme; and a civil money penalty of up to \$10,000 per day for failing to comply with reporting requirements. Additionally, violators may be subject to exclusion from the Medicare program.

ii. Avoiding Stark Self-Referral Violations: Statutory Exceptions and Advisory Opinions

Statutory Exceptions

Similar to the Anti-Kickback Statute’s safe harbor provisions, the Stark Statute contains statutory exceptions which protect certain referrals. *However, unlike the Anti-Kickback Statute, the Stark Self-Referral Statute is a strict liability statute, i.e., the intent of the parties is irrelevant.* In other words, if an otherwise prohibited referral does not meet the requirements of an applicable statutory exception, the statute is violated. Consequently, fulfilling the requirements of the applicable statutory exception is of paramount importance.

Advisory Opinions

Similar to the Anti- Kickback Statute, a party who has a concern regarding the Stark self-referral implications of an existing or proposed arrangement of which such party is a part may submit a request to the Centers for Medicare & Medicaid Services (CMS) for an advisory opinion. The regulations regarding Stark-related advisory opinions are detailed at 42 C.F.R. §§ 411.370 through 411.389. Although only the parties that are the subject of an advisory opinion may rely on it, advisory opinions provide guidance regarding CMS’s interpretation of the Stark Self-Referral Statute. All advisory opinions are posted on CMS’s website at <http://www.cms.gov/>. County of Rockland employees involved in transactions that might implicate the Stark Self-Referral Statute are encouraged to review such opinions.

c. The False Claims Act

i. Background

Within the past few years, the Federal False Claims Act (“FCA”), which was initially enacted to combat fraud against the Union Army during the Civil War, has been increasingly used by the Federal Government to combat health care fraud and abuse. This civil statute, which is codified at 31 U.S.C. §§ 3729-3733, imposes liability on a person or organization that “knowingly”

submits, or causes others to submit, false or fraudulent claims to the Government for reimbursement. Significantly, “knowingly” includes acting in *deliberate ignorance* of the truth or falsity of the information, or showing *reckless disregard* for the same. In other words, the Government does not have to prove specific intent to prevail on a FCA claim. Moreover, although the courts have held that mere mistakes or good faith misinterpretations of regulations or statutes are beyond the scope of the FCA, federal prosecutors have continued to use the FCA against health care providers.

FCA actions are typically instituted by the Federal Department of Justice (“DOJ”) based on an investigation by another government agency (e.g., on referral from CMS, OIG, FBI, etc.). However, unlike the Anti-Kickback or Stark Statutes, the FCA authorizes a private citizen with specific and direct knowledge of an alleged false claim to bring the action on behalf of the United States. These actions are called *qui tam* actions and the private citizen is known as the relator. The DOJ is given an opportunity to take the lead in a *qui tam* action; however, if the DOJ decides not to intervene, the relator is permitted to proceed with the case on behalf of the Government if he or she chooses. Notably, if a relator prevails in a FCA suit (either by judgment or settlement), he or she is entitled to anywhere between 15% to 30% of the proceeds. *Qui tam* actions are being initiated with increasing frequency by employees (including physicians) of health care organizations; often these employees have tried to address their concerns within the organization, without success.

Violations of the FCA result in liability to the Government in the amount of three times the amount of the Government’s damage for *each* false claim submitted, plus a civil penalty of not less than \$5,000 and not more than \$10,000 for each wrongful act. Consequently, the potential financial exposure for an organization or provider who regularly submits Medicare claims can be enormous.

New York State also has enacted the NY False Claims Act (see N.Y. State Finance Law §§ 187-194), which imposes civil penalties on individuals and entities for, amongst other things, filing false or fraudulent claims for payment from any state or local government including health care programs such as Medicaid. Violations of this act result in civil penalties ranging from \$6,000 to \$12,000 per claim plus two to three times the amount of all damages including consequential damages, costs and attorneys’ fees. Civil actions for false claims may be brought by the attorney general, local government or private individuals. If an action is successful, the private individual will be entitled to 25% to 30% of the proceeds if the attorney general or government did not participate or 15% to 25% of the proceeds if the attorney general or government did participate.

It is the obligation and the policy of the County of Rockland to prevent and detect any fraud, waste and abuse with respect to federal and state health care programs. The County prohibits the knowing submission of any false or fraudulent claims for payment to these health care programs by any employee, and it expects all employees to review and abide by these federal and state laws.

In addition, the County of Rockland expects and encourages any employee who is aware of, or reasonably suspects, the preparation or submission of a false or fraudulent claim or any other potential fraud, waste or abuse related to a federal or state health care program to report such information to the CO and his or her supervisor. Any person who reports such information will

have the right and opportunity to do so anonymously and will be protected from intimidation and retaliation.

Finally, the County will swiftly and thoroughly investigate any credible report or suspicion of fraud, waste or abuse via the procedures set forth in this Corporate Compliance Program. At the conclusion of each such investigation, the County will take any necessary and appropriate corrective action.

Examples of the types of actions by County of Rockland employees that could violate the False Claims Act include:

- Filing a claim for services that were not rendered at all or were not rendered as described;
- Filing a claim for services that were rendered but were medically unnecessary;
- Submitting a claim containing information an employee knows to be false;
- Misusing social security or Medicare symbols, emblems or names in marketing; or
- Submitting cost reports containing unallowable costs.

ii. OMIG's Summary of the Relevant Statutes

OMIG has drafted a detailed summary of the relevant federal and New York State laws regarding false claims. A copy of the summary is attached as **Exhibit F** and also is available online under "Relevant Statutes" at <http://www.omig.ny.gov/data/content/view/159/303/>. All employees are expected to read and familiarize themselves with this summary.

iii. Avoiding FCA Violations: OIG/OMIG Work Plans, OIG/OMIG Corporate Compliance Program Guidance and Other OIG/OMIG Documents

Unlike the safe harbors under the Anti-Kickback Statute and the statutory exceptions under the Stark Self-Referral Statute, there are no legal guidelines under the FCA that can be followed to ensure immunity from prosecution. However, the OIG provides guidance on FCA enforcement in various ways. For example, each fiscal year the OIG publishes a work plan outlining the full range of projects planned in each of the HHS major divisions, which is available on its website at <http://oig.hhs.gov/reports-and-publications/workplan/index.asp>. The work plan is divided into segments of the health care industry (e.g., hospitals, home health, physicians, and medical equipment and supplies) and provides information about the issues the OIG plans to focus on within each health care industry segment during the fiscal year. The information in the work plan enables a health care entity to be proactive in its efforts to ensure compliance with government initiatives. Each year, OMIG also publishes a work plan, which is available on its website at <http://www.omig.ny.gov/data/content/view/225/315/>. As part of the County of Rockland Corporate Compliance Program, the CO, with the participation of the Compliance Committee, will: (1) review the OIG and OMIG work plans on an annual basis for guidance as to what issues should be addressed as part of the County of Rockland Corporate Compliance Program; (2) review all past and any future model Corporate Compliance Program Guidance documents for the same reason; and (3) routinely access the OIG and OMIG websites to monitor results of

recent OIG and OMIG investigations, surveys, etc. The CO and the Compliance Committee will also ensure that relevant OIG and OMIG information is disseminated to managers and employees in a timely and appropriate manner.

d. Additional Relevant Fraud and Abuse Laws

The aforementioned laws certainly do not encompass all of the legal requirements imposed on health care entities such as the County of Rockland. There are an array of criminal provisions addressing fraudulent and abusive practices within the Medicare and Medicaid programs (see 42 U.S.C. § 1320a-7b *et seq.*, which prohibits, among other things, false statements made in connection with an application for benefits or payment, false statements regarding the conditions or operation of an institution and charging or accepting payment in excess of allowable medical rates). As a result of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), there are now criminal laws that involve “federal health care offenses” applicable to all third-party payors (see, for example, 18 U.S.C. § 1035, false statements related to health care matters, and 18 U.S.C. § 1347, health care fraud).

Additionally, there are several civil laws applicable to the Medicare and Medicaid programs that provide for monetary penalties and exclusion authority for fraudulent or abusive conduct, such as violation of Medicare assignment regulations, violations of participating provider agreements, use of false physician credentials, filing of claims by excluded entities, or submitting claims for medically unnecessary services (see 42 U.S.C. § 1320a-7 *et seq.* (exclusion authority) and 1320a-7a *et seq.* (civil monetary penalties)).

Although the number and complexity of the various fraud and abuse laws may seem overwhelming, the County of Rockland is confident that its employees and other members of the County of Rockland family can comply with such laws by participating in educational activities (related to the Corporate Compliance Program in general and to an employee’s job in particular) and utilizing the various means of communication throughout the institution (e.g., asking supervisors for guidance, calling the CO or the Compliance Helpline, etc.) to get their questions answered and their concerns addressed. In other words, if in doubt, find it out!

2. Specific Business Transactions or Relationships Involving Fraud and Abuse Issues

a. Patient Referrals

- *The County of Rockland does not pay for referrals.*

The County of Rockland does not pay anyone – employees, physicians, other health care professionals, or other health care-related organizations – for referrals of patients. The County of Rockland pays only for services provided to the County of Rockland and its patients. The County of Rockland does not make payments or provide non-cash benefits (e.g., office space) to any physician or health care professional providing services to the County of Rockland without a written contract which has been approved through the corporate approval process. The County of Rockland requires physicians and health care professionals to submit invoices outlining specific dates, hours, and types of services performed prior to making payment.

Where County of Rockland employees are in a position to make referrals to physicians, health care professionals or other health care facilities, such referrals must be based solely on what is best for the individual seeking treatment, not financial considerations.

- *The County of Rockland does not pay patients.*

The County of Rockland does not routinely waive insurance co-payments or deductibles, or otherwise provide financial benefits to patients in return for utilizing the County of Rockland's services. The County of Rockland may provide appropriate financial accommodation to a patient in circumstances where the patient can demonstrate financial hardship.

b. Arrangements Involving Physicians

Physician-hospital arrangements are the primary focus of both the Federal Anti-Kickback Statute and the Stark Self-Referral Statute. In this section, the Code of Conduct addresses how arrangements between the County of Rockland and its affiliated physicians can be structured to avoid violating these statutes.

- *Every County of Rockland arrangement with a physician that involves remuneration must be in writing and reviewed in advance by the County of Rockland's County Executive.*

Any arrangement with a physician that involves remuneration, namely, an exchange of anything of value (e.g., a money payment, free or low cost office space, or the opportunity to generate fees) must be in writing and reviewed in advance by the County of Rockland's County Executive. The County Executive will consult with the County Attorney's Office when indicated. All such agreements are subject to the approval of the County Executive. No employee is allowed to offer or grant any benefit to a potential or actual referring physician on the condition that such physician agrees to refer patients to the County of Rockland.

- *Physician arrangements should be structured in accordance with the Anti-Kickback Statute's Safe Harbors and the Stark Self-Referral Statute's Exceptions to the degree possible.*

County of Rockland employees are urged to use foresight when engaging in business transactions that involve physicians. Prior to purchasing services or assets from a physician, the County of Rockland must ensure that there is an actual, demonstrable need for such services or assets and that the amount paid by the County of Rockland for such services or assets is consistent with fair market value (which may be defined as what the County of Rockland would pay a physician who does not admit patients to the County of Rockland, or a non-physician, for the service or asset.)

- *Joint Ventures with Physicians*

The County of Rockland shall not enter into any joint ventures with a physician or physicians until such time as the County of Rockland's County Executive, in consultation with the County Attorney's Office, has reviewed the terms and provisions of such proposed joint venture so as to ensure that the proposed venture complies with applicable laws, regulations, agreements with lenders, and County of Rockland policies.

- *Advertising and Marketing of Physician Services*

Medicare rules state that the reimbursement of advertising or marketing expenses is permissible only to the extent monies are paid to advertise or market (i) a new physician recruit who otherwise meets recruitment criteria or (ii) a County of Rockland program. Consequently, County of Rockland advertising or marketing shall be geared to primarily benefit the County of Rockland or a County of Rockland program. However, in the event that such advertising or marketing involves a physician other than a new recruit, and the physician will benefit from the advertising or marketing, the County of Rockland will ensure that the physician pays all or a reasonable portion of, as applicable, the County of Rockland's costs for such marketing or advertising.

c. Cost Reporting

Cost reporting issues have given rise to several FCA lawsuits against medical centers.

- *The County of Rockland will comply with all federal and state laws and regulations pertaining to cost reports. Costs reported by the County of Rockland, and methodologies for claiming reimbursement, will be in accordance with the law.*

d. Coding, Billing, and Reimbursement Matters

These matters are the subject of intense scrutiny by federal and state governments and third-party payors.

- *The County of Rockland is committed to ensuring that its coding, billing and reimbursement practices comply with all federal and state laws and regulations and the program requirements of third-party payors.*

C. Coding, Billing and Claims Development and Submission

1. General Policy

Certain billing and coding practices are unacceptable to the federal and state governments because they either are, or potentially could be, fraudulent. The County of Rockland is committed to submitting only claims that are complete, accurate and are supported by relevant medical documentation. Claims that have been rejected by a third-party payor must be handled in accordance with County of Rockland's policies. All outstanding bills will be continuously monitored and annually audited by an independent accounting firm.

The County of Rockland is further committed to ensuring that its employees are trained and updated regarding changes to the billing requirements of Medicare, Medicaid and other third-party payors.

The chief financial officer (CFO) of each of the three departments³ in conjunction with the CO shall oversee County of Rockland's compliance with coding and billing standards and procedures. This oversight will include ensuring that there are effective orientation programs for County of Rockland employees involved in processing or submitting claims.

The CFO of each of the three departments will ensure that there is a process for review of all rejected claims, which process shall be reviewed and approved by the Compliance Committee. Such review process shall quantify and categorize all rejections. Thereafter, proper controls and procedures shall be developed and implemented to avoid future rejections, including verifying that all requirements regarding the submission of supporting documentation for Medicare and other billings are met, and verifying a patient's insurance coverage, both primary and secondary, if applicable, before bills are submitted.

The CFO will also ensure that all billing staff are provided with appropriate education and training regarding fraud and abuse issues related to claims development and submission.

2. Specific Activities Involving Coding, Billing and Claims Development and Submission

a. Misrepresenting Diagnostic Information or Services Rendered - Overcharging or Up-Coding

The County of Rockland is committed to ensuring that all claims for reimbursement accurately reflect the patient's diagnosis and the services provided as documented in the medical record. No employee shall submit a claim for reimbursement that is for a more complex service or item than the service or item provided. A claim shall not be submitted unless and until there is medical record documentation available to support services billed.

b. Unbundling/Bundling of Services

The County of Rockland is committed to ensuring that services subject to bundling rules (e.g., clinical laboratory tests) are identified and billed in an appropriate manner. The County of Rockland prohibits the practice of unbundling of services otherwise required to be bundled for the purposes of ensuring a higher rate of reimbursement.

c. Billing Only for Services Rendered or Items Provided

The County of Rockland is committed to ensuring that patients and third-party payors are billed only for services or items actually rendered or provided. County of Rockland employees may not submit claims for services or items that have not been provided. This requires physicians and other health care professionals to thoroughly document all services and items provided, and it also requires coding and billing personnel to notify the CO and their supervisors if they become aware that an item or service may have been ordered but not provided. Questions or uncertainties as to whether a service or item was provided must be confirmed prior to submitting a claim for same.

³ At the Department of Health, the CFO is the Director of Fiscal Operations, and at the Departments of Hospitals and Mental Health, the CFO is the Director of Finance.

d. Duplicate Billing

It is never permissible to submit duplicate bills for a service provided to a patient. If a County of Rockland employee discovers or suspects an instance or pattern of duplicate billing, she or he must immediately report the matter to the CO and her or his supervisor.

e. Medical Necessity

The County of Rockland is committed to ensuring that all billing complies with all applicable medical necessity requirements of third-party payors, including Medicare. As a general rule, the County of Rockland is prohibited from billing for services that are not considered medically necessary. In the case of Medicare, if a provider believes that a service or item is medically indicated but may not satisfy Medicare's requirements regarding medical necessity, the provider must obtain a written acknowledgment (known as an Advance Beneficiary Notice or "ABN") from the patient that she or he was informed of this possibility and agrees to be liable for payment in the event Medicare denies the claim for lack of medical necessity.

County of Rockland physicians and other health care providers are required to keep current with medical necessity requirements and to obtain ABNs where indicated. Moreover, outpatient registrars (or personnel within a department who perform registration activities) are required to obtain and retain, for each test ordered, the physician's requisition, which must contain complete diagnostic information and the physician's signature.

f. Medicare As Secondary Payor ("MSP")

The County of Rockland is committed to ensuring that all Medicare-eligible patients are screened to determine whether Medicare is a primary or secondary payor. To this end, the County of Rockland will utilize CMS's MSP questionnaire to ensure that MSP candidates are properly identified. A County of Rockland employee may not bill Medicare as a primary payor if he or she is aware that other types of insurance are available.

g. Complete, Accurate, and Truthful Claims

The County of Rockland is committed to ensuring that all claims are complete, accurate and truthful. County of Rockland employees and affiliated physicians should never knowingly or willfully make false statements or representations, or conceal or fail to disclose necessary information, to a third-party payor.

h. Cost Reporting

The County of Rockland is committed to ensuring that its cost reports meet all legal requirements and the requirements of third-party payors. In addition to appropriately training and educating its own cost report-preparing staff, the County of Rockland will use outside auditors to guard against submission of inflated or inaccurate cost reports.

i. Charge Master

The County of Rockland is committed to ensuring the accuracy of its Charge Master. The Compliance Committee shall ensure that the Charge Master will be reviewed on at least an annual basis, either internally or by an outside expert, and shall develop policies and procedures to ensure that the Charge Master is maintained appropriately, including identifying who is authorized to make additions, deletions or revisions to the Charge Master.

j. Credit Balances

The County of Rockland is committed to ensuring that credit balances are identified and refunded in a timely manner. As such, the Finance Department will develop a system for identifying such balances and a process for ensuring timely refunds.

3. Issues Specific to Certain County Departments or Services

a. County Laboratory Services

The County of Rockland is aware that this area has been the focus of fraud and abuse investigations for several years. The County of Rockland is committed to ensuring that laboratory services are ordered, coded, and billed in an appropriate manner. To that end, the County of Rockland Laboratory Director, with the assistance of the CO and the Compliance Committee, will review the OIG's Compliance Program Guidance for Clinical Laboratories dated August 1998 and design and implement an intradepartmental compliance program that strives to address the issues identified in the Program Guidance.

b. County Radiology Services

Similar to laboratory services, the federal and state governments, as well as many private insurers, have concerns regarding the medical necessity of various radiological procedures, as well as concerns about bills for services ordered but not rendered. To address these concerns, the Radiology Department will develop a written policy and procedure regarding establishing medical necessity prior to performing a procedure. In addition, the Department's monitoring program will be updated to incorporate monitoring of tests that are ordered but not performed.

D. Pharmaceuticals and Controlled Substances

Many of the County of Rockland's employees have responsibility for or access to prescription drugs, controlled substances, hypodermic needles, drug samples and other regulated pharmaceuticals. The County of Rockland is legally responsible for the proper distribution and handling of these pharmaceutical products. Federal, state and local laws covering prescription drugs and controlled substances are intended to maintain the integrity of our national drug distribution system and protect consumers by assuring that prescription drugs are safe and properly labeled. These laws include prohibitions against diversion of any prescription drug or controlled substance, including a drug sample, in any amount for any reason to an unauthorized individual or entity. The distribution of adulterated, misbranded, mislabeled, expired, or diverted pharmaceutical is a violation of federal and state law for which severe criminal penalties may be imposed on individual violators, as well as on the County of Rockland.

It is the County of Rockland's policy that all employees be both diligent and vigilant in carrying out their obligations in handling and dispensing prescription drugs and controlled substances in accordance with all applicable laws, regulations and County of Rockland procedures. County of Rockland policies are available in the Nursing and Pharmacy Manuals.

Every professional employee, whether physician, nurse, pharmacist or any other individual licensed to prescribe, dispense, or handle prescription drugs or controlled substances, is expected to maintain the highest professional standards in safeguarding pharmaceuticals of all kinds and in preventing unauthorized access to them. This includes adherence to laws and regulations governing procedures for securing scheduled controlled substances and for their return or destruction. No prescription drug or controlled substance may be sold, transferred or otherwise distributed unless authorized by written County of Rockland policy or the appropriate County of Rockland individual charged with such responsibility.

If an employee becomes aware of any potential lapses in security, or any actual infringement of any law, regulation, or County of Rockland policy relating to drugs and medications, the employee must immediately advise the CO and his or her supervisor.

E. Environmental Health and Safety

In the course of the County of Rockland's operations, hazardous materials may be used and infectious wastes may be generated. The County of Rockland is financially and legally responsible for the proper handling and disposal of these materials. It is essential that everyone at the County of Rockland who deals with hazardous materials and infectious waste complies with environmental laws and regulations and follows the environmental safety procedures explained in the County of Rockland's programs and existing manuals. Employees are also expected to:

- comply with all laws and regulations governing the handling, storage and use of hazardous materials, other pollutants and infectious wastes;
- comply with permits that allow the County of Rockland to safely discharge pollutants into the air, sewage systems, water pollution control facilities, or onto or into land;
- hire only reputable licensed services to transport and dispose of hazardous and polluted materials and infectious wastes; and
- accurately maintain the records required by the environmental laws and regulations, including those that require precise description of the amount, concentration and makeup of hazardous materials or other regulated pollutants and infectious wastes that are used, stored, discharged or generated, the time, place of origin, destination and transporter of hazardous materials, and the discharge of pollutants. These records should be handled pursuant to County of Rockland policy.

No one at the County of Rockland may participate in concealing improper discharge or disposal of hazardous materials, pollutants or infectious wastes. Any employee who has reason to believe that there have been violations of this or any other aspect of the County of Rockland's environmental compliance procedures should immediately report the violation to the CO and his

or her supervisor, who will investigate and, when appropriate, notify pertinent government agencies as required by law.

Both federal and state laws and regulations address the promotion of occupational safety and avoidance of job-related hazards. The Summit Park Hospital Safety Manual, a copy of which is available in the Department of Hospitals, and the Department of Health's various departmental policies including, but not limited to, the Field Staff Safety Policy, copies of which are available in the Department of Health, outline the procedures that should be followed to promote the occupational safety and health of employees. These laws and regulations and the County policies are designed to ensure that an individual's work environment is safe, and employees are required to comply with them. In the event that an employee has reason to believe that a potential or actual infringement of the laws and regulations regarding occupational safety has occurred, or if an employee thinks that the County policies have been violated, the employee must advise the CO and his or her supervisor as soon as possible.

F. Use and Protection of County of Rockland Property and Other Assets

Each employee has a duty to properly maintain and protect County of Rockland property. An employee must respect and care for the County of Rockland's assets, both tangible and intangible, including the County of Rockland's physical plant and equipment and the County of Rockland's other resources, including reference materials and reports, computer software, data processing systems, and databases.

County of Rockland property may not be removed from the premises unless an employee has received prior approval from his or her supervisor. Any community or charitable use of organization resources must be approved in advance by a supervisor. Any use of organization resources for personal financial gain unrelated to the County of Rockland is prohibited.

To ensure that proper security is maintained, employees are required to safeguard access to data, systems, and other proprietary assets, such as the County of Rockland's methods, processes, techniques, computer software, equipment, service marks, copyrights, research data, clinical and pharmacological data, marketing and sales information, personnel data, patient lists, financial data, plans and all other know-how and trade secrets which are in the possession of the County of Rockland and which have not been published or disclosed to the general public. It is essential that employees properly utilize and protect passwords and takes other necessary precautions to guard against unauthorized access to confidential information.

G. Disposition of County of Rockland Property and Other Assets

If an employee is responsible for acquiring or disposing of assets, he or she must be careful to stay within the limits of his or her authority.

H. Expenditures To Be Documented Properly

If an employee is required to report on such matters as travel and entertainment expenses, hours worked, petty cash, vacation time, and the like, he or she must submit complete and accurate information. All expenditures should be substantiated by receipts and/or expense reports as required by County of Rockland policy.

I. Restrictions on Personal Letters to Elected Officials or Political Bodies

If an employee writes a letter to an elected official or other political body on behalf of the County of Rockland, she or he must obtain the written approval of the County Executive in advance of creating or sending the letter. Absent such express written approval, an employee who writes such a letter is required to make clear that the employee is writing in his or her individual capacity and not on behalf of the County of Rockland. County of Rockland materials or services should not be utilized when writing such letters. This restriction includes stationery, supplies, or secretarial services.

J. Competitive Practices and Antitrust Concerns

Antitrust and trade regulation laws prohibit activities or schemes that restrain competition. Competitors are prohibited from entering into agreements to fix prices or to reduce price competition. Price fixing has been interpreted broadly to include any type of joint action between two competitors which influences the price of products or services that the competitors sell either directly or indirectly.

Employees should never discuss prices or patients with competitors. An employee may not cooperate with competitors to fix or stabilize prices, "divide up" customers or markets, boycott competitors or customers, or otherwise interfere with free competition. An employee should not even discuss *the possibility* of such activities with competitors. If a competitor attempts to discuss such activities with a County of Rockland employee, the employee should refuse to participate in the discussion and should notify the CO as soon as possible.

In all of its business dealings, the County of Rockland is committed to:

- competing vigorously and equitably;
- treating all customers and suppliers objectively, honestly and fairly;
- not discussing pricing with competitors or customers in derogation of applicable antitrust laws;
- avoiding any program or practice that could be characterized as unfair or deceptive;
- always presenting the County of Rockland's services and products in an honest and forthright manner; and
- making clear to all suppliers and potential suppliers that the County of Rockland expects them to compete fairly and vigorously for the County of Rockland's business and will select suppliers strictly on their merits.

K. Relationships with Government Authorities and Government Investigations

1. Conflict of Interest Situations

County of Rockland employees must exercise good judgment regarding relationships with officials or employees of governmental authorities (federal, state, or local) so that those individuals are not placed in a conflict of interest situation. Some practices that are acceptable in a commercial business environment, like providing meals, are not acceptable when provided to governmental authorities.

All employees who come into contact with government officials must always maintain the highest professional standards. Gratuities in any form designed to secure favorable treatment or decisions for the County of Rockland are prohibited.

2. Investigations by Government Agencies

In this era of weeding out health care fraud and abuse, it is not uncommon for a hospital to be the subject of a governmental investigation. It is the County of Rockland's policy to fully comply with the law and to cooperate with any reasonable demand in the course of a governmental investigation. However, the County of Rockland has an obligation to protect the legal rights of the organization as a whole, as well as its employees. As such, County of Rockland employees should abide by the following guidelines for interacting with governmental investigators.

a. Fraud Investigator Requesting an Interview

County of Rockland employees should understand that they are under no obligation to submit to an interview with any governmental investigator. *The decision whether or not to submit to an interview is up to the employee.* To facilitate any request for legal assistance, and to make available to the employee information that may assist him or her in deciding whether or not to submit to an interview, the County of Rockland requests that the employee ask the investigator to contact him or her at a later date or time and thereafter immediately contact his or her supervisor and/or the CO.

Employees who are contacted by a governmental investigator should ask the investigator for proof of his or her identity and should inspect the investigator's credentials (e.g., the investigator's badge, shield, or the like). They should also ask the investigator what the purpose of the interview is and the employee's status within the investigation (for example, whether the employee is being contacted as a witness or as a suspect or target of the investigation). It is likely that the investigator will attempt to avoid answering these questions. Employees should be further aware that it is rare for an investigator at the time of initial contact to have the authority to promise that the employee has no civil or criminal exposure in the matter under investigation. Moreover, an employee should be aware that if she or he does submit to an interview without first consulting with the County Attorney's Office and the investigator is unhappy with the information provided, the employee's status in the matter under investigation may change (e.g., he or she may become a suspect).

In the event a County of Rockland employee decides to submit to an interview, he or she has the right to demand that the interview take place during normal business hours, that it take place at

the County of Rockland or another convenient location, and that either a member of the County Attorney's Office or the employee's personal attorney be present during the interview. *Employees may not provide access to or copies of any County of Rockland documents to the investigator without the express permission of the County of Rockland.*

b. Search Warrants

Law enforcement agents are prohibited from conducting a search of any home or business without first obtaining a valid search warrant signed by a judge. ***Therefore, any person who presents to a County of Rockland location claiming to be an agent with a warrant should be asked to SHOW PROPER IDENTIFICATION AND PROVIDE A COPY OF THE SEARCH WARRANT.*** The warrant must identify the place to be searched and often states the time period during which the search may be conducted (e.g., daytime only). It should also have an expiration date. ***Employees should read the warrant and make sure that it gives the agent the authority to search the County of Rockland location.*** Although it is a crime to obstruct an agent in the lawful exercise of his or her duties, including the execution of a search warrant, it is *not* an obstruction to ask for identification and a copy of the warrant.

Once an employee has been shown proper identification and has been provided with a copy of the warrant, the employee should immediately contact the CO. ***Employees should treat the presence of the agent as an emergency and should not give up on attempts to contact the CO until he or she has been contacted!!*** The following information should be provided to the CO:

- the fact that a search warrant has been served
- the law enforcement or regulatory agency who is conducting the search
- the locations being searched as per the search warrant
- the types of evidence to be seized as per the search warrant

Thereafter, the employee physically present at the location being searched should be instructed to interact with the agent and to take notes during the search. The agent should be asked for a business card. If this request is refused, the employee should write down the agent's name and the agency he or she represents. With regard to note taking, the employee should observe and document the course of the search to the best of his or her ability, including observing and documenting the items seized during the search. Although federal and state agents are required to leave a written inventory of the items taken during the search, it is not uncommon for such inventories to be insufficiently detailed. Sometimes, instead of seizing actual documents, the agent may try to photocopy them; an employee is not obligated to permit an agent to use a County of Rockland photocopier and generally should not do so unless he or she first gets clearance by the CO.

Finally, in the confusion and anxiety surrounding a search, the agent often speaks with the employee in what appears to be an informal manner, usually without taking any notes. ***THERE IS NO SUCH THING AS IDLE CHATTER WHEN IT COMES TO TALKING WITH AN AGENT.*** Most likely anything that is said to an agent will eventually be written down in a memorandum and used later in the investigation or in a subsequent legal proceeding. Other than directing an agent to a location specified in the search warrant, the employee is not required to submit to any other questioning.

c. Subpoenas and Other Legal Documents

Any County of Rockland employee who receives an inquiry, subpoena, or other legal document from a governmental agency regarding County of Rockland business, whether received at home or at the workplace, should immediately notify his or her supervisor and/or the CO. Employees may not provide access to or copies of any County of Rockland documents to a governmental agency without the express permission of the County of Rockland.

d. Preservation of Evidence

County of Rockland employees should take care to ensure that County of Rockland information (such as medical records, financial records or any other type of business record), whether in paper or electronic form, and County of Rockland property (for example, computers, medical equipment, etc.) is created, maintained, retained and destroyed or disposed of in strict compliance with County of Rockland policies governing such information or property. In terms of a governmental investigation, nothing is worse than destruction of evidence. Any hint of destruction leads the government to take quicker and more serious steps in managing the investigation (e.g., using search warrants instead of subpoenas). In addition, destruction of evidence can result in a criminal action separate and apart from the matter being investigated.

L. Political Activities and Contributions

The County of Rockland does not and will not seek improper advantage through contributions of its funds, equipment or facilities, or the provision of other gifts or benefits, to public officials or political organizations. The County of Rockland does not and will not make illegal or improper payments to any person or entity.

It is an employee's right to decide whether or not to participate in political and community activities. From time to time, the County of Rockland may communicate information and opinions on issues of public concern that may affect the County of Rockland. However, decisions by employees whether to contribute time, money or resources of their own to any political or similar activity are entirely personal and voluntary.

M. Fundraising

Employees are welcome to support fundraising efforts on behalf of the County of Rockland; however, employees should not feel compelled to contribute. Monies or other items received on behalf of the County of Rockland as gifts should be deposited immediately in County of Rockland accounts.

Charitable contributions from vendors to the County of Rockland may raise issues implicating federal and state anti-kickback laws and should be reviewed with CO before they are solicited or accepted. Care should be taken when soliciting or receiving such contributions, that is, the contributor should not be lead to believe, either directly or indirectly, that the contribution will affect the County of Rockland's judgment regarding the goods or services it purchases, recommends or provides to its patients.

N. Confidential Information

1. General Policy

One of the most important assets of a health care organization is the integrity of its records and other information systems. The following general rules apply with respect to the handling of confidential information, including the maintenance, retention and destruction of records:

- All records must be retained for at least the minimum periods required by state and federal law.
- Records that may affect any County of Rockland obligations to patients must be retained for a period of time that will ensure that they are available when needed.
- Adequate records must be created and maintained in order to document the County of Rockland's compliance with all relevant laws.
- Destruction of records may only take place pursuant to applicable County of Rockland policies. The County of Rockland Records Retention and Disposition Schedule CO-2, which is available online at http://rcweb/misc/records_retetion_CO-2.pdf, and the Retention Schedule for Health Records & Data Systems, which is available in the County Health Information Management Department, outline the procedures that should be followed for the retention and destruction of records.
- Information that is considered confidential must be carefully identified as such and protected from disclosure to unauthorized persons.
- Confidential information must be safely stored and secured by all departments.
- Confidential information may be provided only to or accessed by County of Rockland employees who need the information to properly perform their work activities.
- Confidential information may be distributed only to people who are legally authorized to receive it.

a. Health Care Information and Records

The County of Rockland is committed to ensuring that confidential patient information is created, maintained and disposed of in accordance with all applicable laws. The County of Rockland will not permit the disclosure of confidential patient information to anyone unless such person or entity is permitted by law to have access to such information. All employees of the County of Rockland are expected to adhere to the County of Rockland's policies and procedures regarding the safeguarding of confidential patient information. At the time of hire, every County of Rockland employee is required to read, understand and sign a statement regarding the employee's obligation to protect confidential patient information (**see Exhibit D**).

b. Financial Information and Records

The County of Rockland's financial records serve as a basis for managing the County of Rockland's activities. These records assist the County of Rockland in carrying out its responsibilities to patients, colleagues, suppliers and others and are necessary for compliance with tax and financial reporting requirements. Consequently, it is the responsibility of each employee to maintain the integrity of the County of Rockland's financial records. Employees may never participate in any misstatement of the County of Rockland's accounts. There is never justification for maintaining "off the books" accounts to facilitate questionable or illegal payments.

c. Electronic Data and Information

One of the County of Rockland's most valuable assets is its body of confidential information, which includes electronic information. The widespread use of computer terminals and computer systems has resulted in confidential information being accessible to many employees. Electronic information is to be accorded the same degree of confidentiality as information contained in a document. All County of Rockland employees must comply with the County of Rockland Guidelines for Use of County Technology Resources (Executive Order No. 10-02), a copy of which is available in each Department.

d. Use of Confidential Information Owned by Others

Like the County of Rockland, other organizations and individuals have confidential proprietary information they want to protect. These other parties are sometimes willing to disclose their confidential information to the County of Rockland for a particular purpose. If in the course of employment a County of Rockland employee utilizes another party's confidential information, he or she must utilize such information in an appropriate manner so as to minimize the possibility of being accused of misappropriating or misusing the information.

The receipt of confidential or restricted information, whether obtained orally, visually or in writing, must not take place until the terms of its use have been formally agreed to in writing by the County of Rockland and the other party. Establishing such an agreement requires the prior written approval of an appropriate County of Rockland officer. Once another party's confidential or restricted information is made available for an employee's use, he or she must not use, copy, distribute or disclose that information unless the terms of the agreement expressly permit such use, distribution, etc.

Special care should be taken when acquiring software from others. As intellectual property, software is protected by copyright laws and may also be protected by patent laws, trade secret laws or as confidential information. Software includes computer programs, databases and related documentation owned by the party with whom the County of Rockland has an agreement. Employees must follow established County of Rockland procedures before accepting software or signing a license agreement. The terms and conditions of such licensing agreements, such as provisions not to copy or distribute programs, must be strictly followed. Also, if an employee

acquires software for the employee's personally-owned equipment, such software should not be introduced into any County of Rockland systems in any manner whatsoever.

2. Record Retention

The County of Rockland is required by various federal and state laws to maintain medical and business records for specified periods of time. The County of Rockland can be subjected to penalties or other charges if records are not properly maintained. Accordingly, the CO is responsible for ensuring that there is a comprehensive record retention policy in place at the County of Rockland. All employees must comply with the record retention policies applicable to them in the course of their daily work activities. In addition, all employees must comply with any and all medical records access, retention, or destruction policies administered by the County Health Information Management Department. Questions regarding access to or the retention or destruction of medical records should be directed to a supervisor, the Director of Health Information Management, and/or the CO. The County of Rockland Records Retention and Disposition Schedule CO-2 and the Retention Schedule for Health Records & Data Systems outline the procedures that should be followed for the retention and destruction of records.

O. Complying with Anti-Discrimination Laws and Rules Against Harassment

It is the policy of the County of Rockland to hire, promote and compensate employees according to their qualifications, performance and potential, without discrimination based on race, color, religion, national origin, age, sex, disability, sexual orientation or veteran's status.

All employees must conduct themselves with respect for one another. The County of Rockland will not tolerate discrimination or harassment in the workplace. Inappropriate actions that demean another individual on the basis of his or her personal attributes are expressly prohibited. Inappropriate actions or behaviors include but are not limited to jokes, slurs, disparaging or derogatory remarks that are racist, ethnic, sexist, or related to sexual orientation, age or disabilities. The County of Rockland's Commissioner of Personnel is the officer responsible for enforcement of these policies. Actual or apparent violations of these policies should be escalated to the Commissioner of Personnel and/or the CO as soon as possible.

P. Employment and Retention of Individuals Excluded from Participation in Federal Health Care Programs

The County of Rockland is aware of the federal Government's concern that hospitals and other health care organizations do not utilize readily available information regarding fraudulent or unqualified practitioners who have been excluded from Medicare and Medicaid participation for various durations. In order to ensure that the County of Rockland does not hire or retain such individuals for employment in positions with discretionary authority, the Commissioner of Personnel, with the assistance of the CO and the Compliance Committee, will be responsible for developing a policy and procedure that incorporates use of the OIG's exclusion list at the time of hire and at various times thereafter. Such policy will include an affirmative obligation of an employee, including affiliated attending physicians, to notify the Personnel Department immediately upon notice of being excluded from any federal health care program.

III. ADMINISTRATION OF THE CORPORATE COMPLIANCE PROGRAM

A. Oversight Responsibilities

The CO shall be responsible for the day-to-day management and administration of this Program. The Compliance Committee shall assist the CO in the administration of the Program, including without limitation, the investigation of complaints, as requested by the CO or the County Executive.

It is essential that each employee fully adhere to this Program. The directors of the Departments are responsible for adherence to this Program in their respective departments. If any employee has any question regarding the applicability or meaning of any section of this Program, he or she should address such question to the CO in writing, orally, or through the Compliance Helpline.

B. Employee Training

The County of Rockland recognizes the importance of effectively communicating its compliance standards to all of its employees and agents. Thus, it is the intent of the County of Rockland to require its employees to participate in various training programs on a periodic basis. New hires will be provided with initial training regarding the Corporate Compliance Program at or about the time of hire and at least annually thereafter. In addition, specialized training will be given to employees whose work activities are considered high risk areas for fraud and abuse (e.g., coding and billing personnel, physicians, etc.). Training will be provided in a variety of ways, which may include lectures, workshops, case studies, videos, classes and other modalities. All employees must attend and successfully complete any mandatory training that is offered to them by the County of Rockland. Failure to do so will lead to disciplinary action, up to and including termination if indicated. The CO will be responsible for coordinating training under the Corporate Compliance Program, including ensuring that there is adequate documentation substantiating employees' participation in any mandatory training.

The CO, with the assistance of other County of Rockland employees and consultants, will periodically update the County of Rockland's training program to ensure that all sessions and materials are reflective of the most recent developments in the law. The CO will be responsible for ensuring that all training materials are retained for an appropriate length of time and in a manner allowing access to such materials if necessary.

C. Monitoring and Auditing

The County of Rockland is committed to ensuring the effectiveness of its Corporate Compliance Program. To that end, the CO and the Compliance Committee will implement steps to monitor compliance with the Program. This will include internal monitoring and external audits to determine whether the Program is being adhered to and whether it is successfully serving its intended purpose of detecting and preventing improper or illegal activities.

D. Reporting System

Each and every County of Rockland employee has an affirmative obligation to report conduct she or he knows, or reasonably believes to be, criminal in nature and/or a violation of the

Corporate Compliance Program. Failure to do so will result in disciplinary action, up to and including termination.

The County of Rockland is aware that in order for its Corporate Compliance Program to be effective, it must have a reliable, accessible and user-friendly reporting system. In addition to the chain of command for reporting a violation or potential violation currently available, the County of Rockland will establish a confidential telephone helpline for the reporting of potential or actual violations of the Code of Conduct or laws and regulations. Callers will be able to report anonymously if they so desire. Thus, reports of actual or potential wrongdoing may be made orally or in writing to any supervisor, officer or commissioner of the County of Rockland or via the confidential helpline. The CO, or individuals designated by the CO, will be responsible for investigating and following up on any reports made via the reporting system.

Information and records relating to reports made to the CO shall be handled as follows:

1. Allegations of violations of the Corporate Compliance Program shall be recorded by the CO on a form that will be maintained in the CO's office. Names, dates and the identity of witnesses with information (if known/provided) will be included on these forms. The CO is responsible for coordinating the investigation of any reports received.
2. On a quarterly basis, the CO will report to the County Executive regarding the nature of any complaints received and the results of any investigations. The CO, in conjunction with the County Executive and the Compliance Committee, where appropriate, will determine how identified issues will be handled, including making a determination as to whether any alleged wrongdoing violates state or federal law or the Corporate Compliance Program, whether it poses a risk to the general public, or otherwise jeopardizes the County of Rockland in any way. If the CO, County Executive and the Compliance Committee, where appropriate, determine that there has been a violation of state or federal law or the Corporate Compliance Program, they will promptly notify the County Attorney's Office and, subsequently, the appropriate authorities including, but not limited to, OIG and OMIG. The CO will also recommend to the County Executive any remedial action and/or disciplinary action should be taken.
3. The CO will ensure that all records relating to reports of wrongdoing are secured and maintained in accordance with the law, and will also ensure that, to the extent possible, the attorney-client and attorney-work product privileges are preserved.
4. The CO will ensure that the reporting system offers employees the opportunity to report alleged wrongdoing after work hours so that employees can contact the CO or the helpline from home.
5. The CO will ensure that employees are made aware that the County of Rockland will treat the identity of a reporting source as confidential and will not disclose such person's identity unless compelled to do so by law.
6. The CO will ensure that employees are aware that the County of Rockland will not discipline an employee solely on the basis that the employee reported conduct he or she either knew or reasonably believed to be criminal in nature or a violation of the Corporate Compliance

Program. The CO will make clear, however, that an employee who knowingly fabricates a report of wrongdoing, for whatever reason, will be disciplined.

E. Enforcement and Discipline

The County of Rockland recognizes the need to enforce the standards and procedures of its Corporate Compliance Program and to discipline those employees who violate the Program by failing to report suspected problems, participating in non-compliant behavior, encouraging, directing, facilitating, or permitting, either actively or passively, non-compliant behavior and/or negligently failing to detect an offense. All employees of the County of Rockland will receive training relative to their obligations under the Program. Employees who fail to adhere to the standards of this Program will face disciplinary action, up to and including termination if indicated. An employee who otherwise participates in wrongdoing will not be immunized for reporting,

- *Guidelines Regarding Disciplinary Action for Violating the Program*

If you are an ***employee of the Departments of Health, Hospitals or Mental Health*** and you do not comply with the Program, the County of Rockland may take disciplinary action against you. Depending on the facts and circumstances of each case, and in compliance with any applicable collective bargaining agreements, the County of Rockland may take one or more of the following actions:

- reprimand you;
- place you on probation;
- suspend you;
- dismiss you;
- report you to the County Attorney's Office;
- refer you for criminal prosecution; and/or
- demand that you reimburse the County of Rockland for any losses or damages resulting from the violation.

If you are a ***consultant, contractor, agent or affiliated physician of the County of Rockland or if you represent the County of Rockland in any other capacity*** and you do not comply with the Program, the County of Rockland may:

- terminate your agreement with the County of Rockland;
- report you to the County Attorney's Office;
- refer you for criminal prosecution;
- demand that you reimburse the County of Rockland for any losses or damages resulting from the violation; and/or
- take any other actions that may be permitted by law or by the County of Rockland's agreement with you.

If you are a *commissioner, director, officer, or manager*, you will be subject to disciplinary action if:

- you know that anyone who reports to you is considering or planning to engage in conduct that is prohibited by the Program and you do not report it in accordance with the Program; or
- you know that anyone who reports to you has actually engaged in conduct that is prohibited by the Program and you do not report it in accordance with the Program.

Please note: Some Program violations may be serious enough to result in civil or criminal fines and imprisonment.

- *Additional Information Regarding Corporate Compliance Program-Related Disciplinary Action*

As with all matters involving investigations and discipline, the County of Rockland intends to be fair and treat people with dignity. If you are charged with violating the Program, you will be given an opportunity to explain your actions before disciplinary action is taken.

The County of Rockland will also take disciplinary action against:

- anyone who deliberately fails to report a violation or who deliberately withholds relevant and material information about a violation of the Program;
- a violator's supervisor, to the extent that the circumstances of the violation reflect inadequate supervision or lack of diligence;
- any supervisor who directly or indirectly intimidates or retaliates against someone who reports a violation of the Program;
- any supervisor who encourages anyone else to intimidate or retaliate against someone who reports a violation of the Program; and
- anyone who knowingly makes a false accusation that another individual violated the Program.

Below is a list of potential violations under the County of Rockland's Program. The disciplinary action taken will depend upon all the facts and circumstances involved in a particular case and, where relevant, the applicable collective bargaining agreement.

Employee Action

1. Negligently providing erroneous information to the County of Rockland, a government entity, an insurer or others.
2. Willfully providing materially false information to the County of Rockland, a government entity, an insurer or others.

3. Felony conviction of any federal or state law.
4. Failure to report known criminal conduct of a County of Rockland employee.
5. Failure to detect conduct by an employee of the County of Rockland that a reasonable person should have known to be criminal and reasonably could be expected to detect.
6. Intentionally providing false information over the Compliance Helpline to the CO.
7. Failure to take action prescribed under the County of Rockland's Corporate Compliance Program, or failure to comply with any duties stated in the Program.

F. Detection and Prevention of Program Violations

The County of Rockland is committed to ensuring that the Corporate Compliance Program results in the following: (i) the timely detection of improper or illegal activities; (ii) a full and complete investigation to determine if improper or illegal activity has occurred; and (iii) the creation and implementation of a timely and effective corrective action plan (including revision of the Corporate Compliance Program) to ensure that the improper activity cannot occur again.

It will be the CO's responsibility, in conjunction, with the County Executive, the Compliance Committee (where appropriate) and the County Attorney's Office, to determine when and how the appropriate authorities will be notified if a violation of law has occurred.

EXHIBIT A

ANNUAL COMPLIANCE QUESTIONNAIRE (Employees of the Departments of Health, Hospitals and Mental Health Only)

The Compliance Questionnaire is a critical part of the Corporate Compliance Program. It requires an employee of the County of Rockland to verify that the employee is aware of and in compliance with the guidelines of the Program. Employees will be asked to complete the questionnaire on an annual basis. If during the year an employee has a change in circumstances that would cause the employee to change his or her response to any question in this questionnaire, the employee should promptly notify the CO.

Any doubt as to whether a question should be answered in the affirmative should be resolved in favor of disclosure, giving the reason why the employee believes that the situation disclosed does not constitute a conflict of interest or a questionable payment, as the case may be.

The following is a brief explanation about the questionnaire:

- Parts A through C of this questionnaire are designed to determine the nature and extent of any outside interest an employee may have that might constitute a conflict of interest with the business and affairs of the County of Rockland.
- Part D is designed to determine whether any payments were improperly authorized or made from County of Rockland funds or assets in violation of law or contrary to the ethical standards of business conduct adopted by the management of the County of Rockland.
- Part E is designed to discover any weaknesses or deficiencies in the County of Rockland's internal accounting controls, and whether such controls are sufficient to reasonably assure (i) that transactions were executed in accordance with management's authorization and accurately recorded in the County of Rockland's financial statements, and (ii) to maintain accountability for assets of the County of Rockland.
- Part F is designed to assist the County of Rockland in discovering any existing or potential legal problems regarding the County of Rockland's operations or employees.

The terms used in the questionnaire are defined as follows:

- **Competitor:** A person who offers or sells products or services in competition with the County of Rockland.
- **Confidential Information:** Any information concerning the County of Rockland's business acquired by an employee in the course of employment that is not available to the public, including, without limitation, information obtained from any proprietary document or another employee of the County of Rockland and to which a reasonable person would attach importance in dealing or competing with the County of Rockland.

- **Family:** Includes an employee and his or her spouse, parents, siblings, and children, as well as the employee's parents-in-law, siblings-in-law, nieces and nephews, and any person living in the employee's household.
- **Own:** To have an ownership interest held by an employee or a family member, whether directly or indirectly, such as the beneficiary of a trust.
- **Person:** Includes an individual, firm, partnership, trust, corporation or other form of entity.
- **Supplier:** Any person who sells, leases, rents, agrees to furnish, or has sold, leased, rented or agreed to furnish any products, merchandise, goods, materials, supplies, machinery, equipment, real estate, credit or insurance to, or who has performed any services (professional or otherwise) for or on behalf of the County of Rockland.

PART A. Ownership, Entertainment, Gifts, Loans, Etc,

1. During the past year, did you or any member of your family own, directly or indirectly, any interest whatsoever in, or participate in the profits or income of, any supplier or competitor?

Yes No

2. During the past year, did you or any member of your family receive or were you or they furnished, directly or indirectly, with any compensation, entertainment or gifts in excess of \$25 retail value per vendor, or any credits, loans or cash of any amount, or anything else of value from any supplier or competitor?

Yes No

3. Is any member of your family an employee of the County of Rockland?

Yes No

[If your answer to any of the questions in Part A is yes, indicate the number of the question on a separate paper attached to this questionnaire and provide the name and address of each such supplier or competitor, the name of the person owning such interest and/or the nature and extent of such income, money or thing of value received, entertainment furnished and circumstances under which such transactions or events occurred. If a member of your family is an employee of the County of Rockland, please provide such person's name, relationship to you and place of employment.]

PART B. Employment Status

1. During the past year, were you an owner, officer, director, employee or consultant of, or otherwise employed or retained in some other capacity by or affiliated with, any supplier or competitor, or was any member of your family an owner, officer, director, or employee or consultant in a decision or policy-making capacity with any supplier or competitor?

Yes No

2. During the past year, have you accepted compensation in cash or property from persons other than the County of Rockland for (i) services for which you were being paid by the County of Rockland, or (ii) services performed by you during your County of Rockland working hours?

Yes No

[If your answer to any of the above questions is yes, indicate the number of the question on a separate paper attached to this questionnaire and state the full details, including name and address, of such persons and the nature of the relationship and the amount and kind of any remuneration received.]

PART C. Use of Property or Confidential Information

1. During the past year, did you use or reveal confidential information concerning the County of Rockland or its business, or know of any other person who used or revealed confidential information concerning the County of Rockland or its business, except (i) in the course of your employment by the County of Rockland or (ii) to other employees of the County of Rockland as required by virtue of your employment, without first obtaining specific authorization from your supervisor?

Yes No

2. During the past year, did you use, permit others to use or have knowledge of others' use of, funds, employees, materials or equipment of the County of Rockland for personal purposes?

Yes No

[If the answer to either of the above questions is yes, indicate the number of the question on a separate paper attached to this questionnaire and state the full details, including the name and address of the recipient of the information or property and the information or property involved.]

PART D. Payments

During the past year, did you pay, authorize or otherwise have knowledge of the following kinds of payments made by or on behalf of the County of Rockland:

1. Political contributions directly or indirectly made from County of Rockland funds, or the furnishing of County of Rockland assets, facilities or services to any political party, politician or candidate for public office?

Yes No

2. Payments to government officials and personnel from County of Rockland funds, either directly or indirectly, (a) through the reimbursement of purported business expenses to any employee, or (b) through an independent intermediary, in an effort to procure special favors, advantages or benefits for the County of Rockland? (Note: Any such payments made to government officials or personnel are presumed to be made to influence the exercise of their judgment or discretion in disposing of matters on behalf of the governmental body involved.)

Yes No

3. Payments directly or indirectly made from County of Rockland funds or the furnishing of a County of Rockland asset or service for the purpose of improperly influencing any person's conduct in connection with the purchase of County of Rockland's products or services or the referral to the County of Rockland of patients?

Yes No

4. Payments or any other form of remuneration directly or indirectly received for the purpose of influencing a County of Rockland employee's conduct in connection with the purchase of goods or services from a supplier or the making of a patient referral to a supplier?

Yes No

[If your answer is yes, indicate the number of the question on a separate paper attached to this questionnaire and state the full details of the questionable payment, including the date, nature (i.e., cash, services or furnishing a corporate asset, etc.), the recipient, the person who authorized the payment, and the reasons and circumstances under which the payment was given.]

PART E. False Records; Statements to Accountants

1. Do you know of or have reasonable grounds to suspect any instances where a transaction may not have been properly recorded on the County of Rockland's books, or where a transaction was not recorded at all?

Yes No

2. Do you know of or have reasonable grounds to suspect any instances where supporting documents to a transaction were altered or falsified to disguise the true purpose of the transaction?

Yes No

3. Do you know of or have reasonable grounds to suspect any instances where the County of Rockland's internal accounting control procedures were circumvented or where transactions were handled in what seemed to be an extraordinary or unusual manner?

Yes No

4. Do you know of or have reasonable grounds to suspect any instance where the County of Rockland, or any person acting on behalf of the County of Rockland maintained a bank account for or on behalf of the County of Rockland in a name other than in the County of Rockland's name?

Yes No

5. Do you know of or have reasonable grounds to suspect any County of Rockland bank account whose existence was not reflected in the County of Rockland's books and records?

Yes No

6. Do you know of or have reasonable grounds to suspect any instance where an internal auditor or accountant or a representative of the County of Rockland's independent accountants has been told by an officer or employee of the County of Rockland a materially false or misleading statement or omitted to state any material fact necessary in connection with the preparation or examination of the County of Rockland's financial statements?

Yes No

[If the answer is yes to any of the above questions, state on a separate paper attached to this questionnaire the full details of the instance, including the nature of the transaction and the individual(s) involved.]

PART F. Certification

I hereby certify that I have read and understand the Corporate Compliance Program and that the answers given in response to this questionnaire are complete and accurate to the best of my knowledge.

Type or Print Name

Position

Signature

Department

Date

Employee Number (SS#)

EXHIBIT B

**ANNUAL CERTIFICATE OF COMPLIANCE
(Employees of the Departments of Health, Hospitals and Mental Health Only)**

Please read and answer the following:

- a) **(Check if applicable.)** I have indicated below all personal and family interests in or financial relationships with any competitor, vendor, or other company doing business with the County of Rockland Departments of Health, Hospitals, and Mental Health (“County of Rockland”).

Company Name	Relationship (Self/Family)	Type of Business	Description of Ownership or Financial Relationship

- b) **(Check if applicable.)** I/my family have/has no ownership interest in or any other financial relationship with any competitor, vendor, or other company that does business with the County of Rockland.

c) Acknowledgment

I certify that I have read and understand the County of Rockland’s Corporate Compliance Program. I am complying and will continue to comply with all of the policies stated in the Program. I have no knowledge of any current violation of the Program. If in the future I should become aware of any violation, I shall report such violation to the CO via the Compliance Helpline or another method.

Type or Print Name

Position

Signature

Department

Date

Employee Number (SS#)

EXHIBIT C

**DEPARTURE FROM COUNTY EMPLOYMENT QUESTIONNAIRE
(Employees of the Departments of Health, Hospitals and Mental Health Only)**

Name (Optional): _____ **Date:** _____

Department: _____ **Title:** _____

1. Have you ever had occasion to use the Compliance Helpline?

yes _____ no _____

- If yes, do you feel your complaint was handled appropriately?

yes _____ no _____

Comments: _____

2. If you did not use the Compliance Helpline, were you aware that it was available?

yes _____ no _____

3. Did you ever have a complaint that you voiced directly to your supervisor?

yes _____ no _____

- If yes, do you feel your complaint was handled appropriately?

yes _____ no _____

Comments: _____

4. Were you aware of the policy against retribution, intimidation and retaliation?

yes _____ no _____

- If so, do you feel this policy was followed?

yes _____ no _____

Comments: _____

5. Were you aware of all County of Rockland compliance standards, and did you receive a copy of the Corporate Compliance Program?

yes _____ no _____

6. Are there any additional issues that you feel the County of Rockland should know about?

yes _____ no _____

Comments: _____

EXHIBIT D

**ANNUAL CONFIDENTIALITY STATEMENT
(Employees of the Departments of Health, Hospitals and Mental Health Only)**

At the County of Rockland Departments of Health, Hospitals, and Mental Health ("County of Rockland") information is collected about a patient's medical history, condition, medication and family illnesses. This information is necessary to provide the most appropriate care for our patients.

Patient information is sensitive and confidential. The County of Rockland and its employees are committed to maintaining the confidentiality of patient information. The County of Rockland and its employees do not release or discuss patient-specific information with others unless it is authorized by law. The County of Rockland has developed various policies and procedures to guide employees as to how confidential information should be handled. The County of Rockland holds its employees responsible for the information contained in such policies.

Violation of any of the County of Rockland's confidentiality policies will result in disciplinary action, up to and including termination.

I have read and understand the County of Rockland's policy on maintaining the confidentiality of patient information.

Name (printed) _____

Department _____

Signature _____

Date _____

EXHIBIT E

ANNUAL LETTER TO SUPPLIERS, VENDORS, AND CUSTOMERS

Dear _____:

We are taking this opportunity to express our appreciation for the fine business relationship the County of Rockland Departments of Health, Hospitals, and Mental Health ("County of Rockland") has enjoyed with your company during the past year and to remind you of our long-standing policy on business gifts and entertainment.

The County of Rockland's policy makes it clear that our employees neither should give gifts or gratuities nor solicit or accept gifts or special favors from suppliers, vendors, or customers. In the interest of all parties, special gifts or favors that could be misconstrued as being prejudicial or preferential to business decisions must be avoided.

In an organization the size of ours, it is conceivable that an uninformed employee might not refuse, or might even encourage, personal favors or gifts. Any situation of this type should be immediately brought to the attention of that employee's supervisor or the County of Rockland's Compliance Officer.

We appreciate your cooperation and ask that you circulate this letter to those persons in your company who come into contact with County of Rockland employees as this will promote the County of Rockland's standards and further our good business relationship.

Lastly, please note that the County of Rockland will interpret your acceptance of a County of Rockland purchase order or signature on a County of Rockland contract as your acknowledgment of and agreement to comply with the County of Rockland's Corporate Compliance Program.

Very truly yours,

(Signature)

EXHIBIT F

FEDERAL & NEW YORK STATUTES RELATING TO FILING FALSE CLAIMS⁴ (All employees)

I. FEDERAL LAWS

False Claims Act (31 U.S.C. §§ 3729-3733)

The False Claims Act (“FCA”) provides, in pertinent part, that:

(a) Any person who (1) knowingly presents, or causes to be presented, to an officer or employee of the United States Government or a member of the Armed Forces of the United States a false or fraudulent claim for payment or approval; (2) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government; (3) conspires to defraud the Government by getting a false or fraudulent claim paid or approved by the Government; . . . or (7) knowingly makes, uses, or causes 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,

is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages which the Government sustains because of the act of that person

(b) For purposes of this section, the terms “knowing” and “knowingly” mean 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.

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

In sum, the False Claims Act imposes liability on any person who submits a claim to the federal government that he or she knows (or should know) is false. An example may be a physician who submits a bill to Medicare for medical services she knows she has not provided. The False Claims Act also imposes liability on an individual who may knowingly submit a false record in order to obtain payment from the government. An example of this may include a government contractor who submits records that he knows (or should know) are false and that indicate compliance with certain contractual or regulatory requirements. The third area of liability includes those instances in which someone may obtain money from the federal government to

⁴ This summary was prepared by OMIG. The County Attorney’s Office may update it as necessary to reflect changes in the law without a further Executive Order.

which he may not be entitled, and then uses false statements or records in order to retain the money. An example of this so-called “reverse false claim” may include a hospital who obtains interim payments from Medicare throughout the year, and then knowingly files a false cost report at the end of the year in order to avoid making a refund to the Medicare program.

In addition to its substantive provisions, the FCA provides that private parties may bring an action on behalf of the United States. 31 U.S.C. 3730 (b). These private parties, known as “*qui tam* relators,” may share in a percentage of the proceeds from an FCA action or settlement.

§ 3730(d)(1) of the FCA provides, with some exceptions, that a *qui tam* relator, when the Government has intervened in the lawsuit, shall receive at least 15 percent but not more than 25 percent of the proceeds of the FCA action depending upon the extent to which the relator substantially contributed to the prosecution of the action. When the Government does not intervene, § 3730(d)(2) provides that the relator shall receive an amount that the court decides is reasonable and shall be not less than 25 percent and not more than 30 percent.

Administrative Remedies for False Claims (31 U.S.C. §§ 3801 – 3812)

This statute allows for administrative recoveries by federal agencies. If a person submits a claim that the person knows is false or contains false information, or omits material information, then the agency receiving the claim may impose a penalty of up to \$5,000 for each claim. The agency may also recover twice the amount of the claim. Unlike the False Claims Act, a violation of this law occurs when a false claim is submitted, not when it is paid. Also unlike the False Claims Act, the determination of whether a claim is false, and the imposition of fines and penalties is made by the administrative agency, not by prosecution in the federal court system.

II. NEW YORK STATE LAWS

New York’s false claims laws fall into two categories: civil and administrative laws and criminal laws. Some apply to recipient false claims and some apply to provider false claims, and while most are specific to healthcare or Medicaid, some of the “common law” crimes apply to areas of interaction with the government.

A. CIVIL AND ADMINISTRATIVE LAWS

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.

Social Services Law § 145-b False Statements

It is a violation to knowingly obtain or attempt to obtain payment for items or services furnished under any Social Services program, including Medicaid, by use of a false statement, deliberate concealment or other fraudulent scheme or device. The State or the local Social Services district may recover three times the amount incorrectly paid. In addition, the Department of Health may impose a civil penalty of up to \$10,000 per violation. If repeat violations occur within 5 years, a penalty up to \$30,000 per violation may be imposed if they involve more serious violations of Medicaid rules, billing for services not rendered or providing excessive services.

Social Services Law §145-c Sanctions

If any person applies for or receives public assistance, including Medicaid, by intentionally making a false or misleading statement, or intending to do so, the person's or the person's family's needs are not taken into account for 6 months if a first offense, 12 months if a second (or once if benefits received are over \$3,900) and five years for 4 or more offenses.

B. CRIMINAL LAWS

Social Services Law § 145 Penalties

Any person who submits false statements or deliberately conceals material information in order to receive public assistance, including Medicaid, is guilty of a misdemeanor.

Social Services Law § 366-b Penalties for Fraudulent Practices

a. Any person who obtains or attempts to obtain, for himself or others, medical assistance by means of a false statement, concealment of material facts, impersonation or other fraudulent means is guilty of a Class A misdemeanor.

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

Penal Law Article 155 Larceny

The crime of larceny applies to a person who, with intent to deprive another of his property, obtains, takes or withholds the property by means of trick, embezzlement, false pretense, false promise, including a scheme to defraud, or other similar behavior. It has been applied to Medicaid fraud cases.

a. Fourth degree grand larceny involves property valued over \$1,000. It is a Class E felony.

- b. Third degree grand larceny involves property valued over \$3,000. It is a Class D felony.
- c. Second degree grand larceny involves property valued over \$50,000. It is a Class C felony.
- d. First degree grand larceny involves property valued over \$1 million. It is a Class B felony.

Penal Law Article 175 False Written Statements

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

- a. § 175.05 - Falsifying business records involves entering false information, omitting material information or altering an enterprise's business records with the intent to defraud. It is a Class A misdemeanor.
- b. § 175.10 - Falsifying business records in the first degree includes the elements of the §175.05 offense and includes the intent to commit another crime or conceal its commission. It is a Class E felony.
- c. §175.30 - Offering a false instrument for filing in the second degree involves presenting a written instrument (including a claim for payment) to a public office knowing that it contains false information. It is a Class A misdemeanor.
- d. §175.35 - Offering a false instrument for filing in the first degree includes the elements of the second degree offense and must include an intent to defraud the state or a political subdivision. It is a Class E felony.

Penal Law Article 176 Insurance Fraud

Applies to claims for insurance payment, including Medicaid or other health insurance and contains six crimes:

- a. Insurance fraud in the 5th degree involves intentionally filing a health insurance claim knowing that it is false. It is a Class A misdemeanor.
- b. Insurance fraud in the 4th degree is filing a false insurance claim for over \$1,000. It is a Class E felony.
- c. Insurance fraud in the 3rd degree is filing a false insurance claim for over \$3,000. It is a Class D felony.
- d. Insurance fraud in the 2nd degree is filing a false insurance claim for over \$50,000. It is a Class C felony.
- e. Insurance fraud in the 1st degree is filing a false insurance claim for over \$1 million. It is a Class B felony.

f. Aggravated insurance fraud is committing insurance fraud more than once. It is a Class D felony.

Penal Law Article 177 Health Care Fraud

Applies to claims for health insurance payment, including Medicaid, and contains five crimes:

a. Health care fraud in the 5th degree is knowingly filing, with intent to defraud, a claim for payment that intentionally has false information or omissions. It is a Class A misdemeanor.

b. Health care fraud in the 4th degree is filing false claims and annually receiving over \$3,000 in aggregate. It is a Class E felony.

c. Health care fraud in the 3rd degree is filing false claims and annually receiving over \$10,000 in the aggregate. It is a Class D felony.

d. Health care fraud in the 2nd degree is filing false claims and annually receiving over \$50,000 in the aggregate. It is a Class C felony.

e. Health care fraud in the 1st degree is filing false claims and annually receiving over \$1 million in the aggregate. It is a Class B felony.

III. WHISTLEBLOWER PROTECTION

Federal False Claims Act (31 U.S.C. § 3730(h))

The FCA 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 FCA. 31 U.S.C. § 3730(h). Remedies include reinstatement with comparable seniority as the *qui tam* relator would have had but for the discrimination, two times the amount of any back pay, interest on any back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

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.


New York Labor Law § 740

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

New York Labor Law § 741

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

THIS EXECUTIVE ORDER SHALL TAKE EFFECT THIS 23 DAY OF June, 2011.



C. SCOTT VANDERHOEF
County Executive