

**Confidential and Proprietary**

**Genesee Council on Alcoholism and  
Substance Abuse, Inc. (“GCASA”)**

**COMPLIANCE PROGRAM PLAN**

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## I. INTRODUCTION.

In furtherance of its vision and mission, Genesee Council on Alcoholism and Substance Abuse, Inc.'s ("GCASA" or the "Organization") has established a Compliance Program that promotes an organizational culture that encourages truthfulness, ethical conduct and a commitment to compliance with federal and state laws, rules, regulations, policies, and standards, payor program requirements and GCASA's business practices governing its operations. GCASA is committed to preventing, detecting, and correcting any improper or unethical conduct, any fraud, waste, and abuse, and conducting its business in a manner that supports integrity in operations. This Plan describes GCASA's Compliance Program, which consists of a combination of this Compliance Plan together with all of the Organization's operational policies and procedures designed to ensure compliance with laws and regulations. The Program applies to: (1) billing; (2) payments; (3) ordered services; (4) medical necessity; (5) quality of care; (6) governance; (7) mandatory reporting; (8) credentialing; (9) contractor, subcontractor, agency, or independent contractor oversight; and (10) other risk areas that are or should reasonably be identified by the Organization through its Organizational Experience (collectively, "Compliance Risk Areas").<sup>1</sup>

The Organization's Compliance Program applies to **all** affected individuals who are affected by GCASA's Compliance Risk Areas, including GCASA's employees, appointees, Chief Executive Officer, senior administrators, managers, officers and members of the Board of Directors, volunteers, agents, independent contractors, contractors, subcontractors, and vendors<sup>2</sup> and any other persons associated with the Organization who are affected by GCASA's Compliance Risk Areas (all of the preceding collectively referred to as "Personnel"). The Organization's Compliance Program applies to persons associated with the Organization who are affected by GCASA's Compliance Risk Areas. All Personnel are expected to read, understand and comply with the Compliance Program (including the Code of Conduct) and all federal and state laws, rules, regulations, policies, and standards that govern their role within the Organization, attend required trainings on the Program, and conduct business, at all times, in a manner that supports integrity in the Organization's operations. Conduct contrary to this expectation is a violation of the Code of Conduct, this Program, and the related policies and procedures. In addition, all Personnel are expected to report to their administrator, director, supervisor or to GCASA's Director of Corporate Compliance/Quality Improvement (hereafter "Compliance Officer"), Chief Executive Officer or the Compliance Report Line or Suggestion Box, any conduct that may violate this Compliance Program, the Organization's policies and procedures, the Organization's Code of Conduct, or applicable federal and state laws, rules, regulations, policies, and standards.

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<sup>1</sup> "Organizational Experience" means GCASA's: (1) knowledge, skill, practice, and understanding in operating its Compliance Program; (2) identification of any issues or risk areas in the course of its internal monitoring and auditing activities; (3) experience, knowledge, skill, practice, and understanding of its participation in the Medicaid Program and the results of any audits, investigations, or reviews it has been the subject of; or (4) awareness of any issues GCASA should have reasonably become aware of for its category or categories of service.

<sup>2</sup> For purposes of this Compliance Program, contractors, agents, subcontractors, and independent contractors (collectively, "contractors") are subject to GCASA's Compliance Program to the extent that the contractors are affected by GCASA's Compliance Risk Areas and only within the scope of the contractor's contracted authority and affected Compliance Risk Areas.

### **A. Vision & Mission.**

It is GCASA's vision to be the preferred provider of behavioral health services in our region to create a community free from addictions.

GCASA's mission is to improve community health, reduce stigma towards people with addictions and work across systems to produce positive community change.

**B. The Program's Elements.** The Organization's Compliance Program consists of the following eight (8) elements as follows:

- (1) Written compliance policies and procedures, including a Code of Conduct;
- (2) Appointment of a Compliance Officer, who is responsible for the day-to-day operation of the Compliance Program and a Compliance Committee to work with the Compliance Officer;
- (3) Training and education of all affected Personnel about the Compliance Program;
- (4) Lines of communication to report compliance concerns, including a method for anonymous and confidential good faith reporting;
- (5) Disciplinary policies to encourage good faith participation in the Compliance Program;
- (6) Systems for routinely identifying compliance risk areas, including self-monitoring and internal auditing;
- (7) Systems for responding to, investigating, and correcting compliance issues; and
- (8) A policy of non-intimidation and non-retaliation for good faith participation in the Program.

GCASA's development and implementation of these eight (8) elements requires the full cooperation and participation of all Personnel. Such cooperation and participation ensure that the Organization maintains a high level of honest and ethical behavior in the delivery of its services.

## **II. CODE OF CONDUCT.**

It is GCASA's policy that all Personnel will comply with all laws, regulations, the Organization's Compliance Plan, policies and procedures, and ethical standards applicable to their duties outlined in this Code of Conduct. The following standards of conduct, which have been adopted by GCASA's Board of Directors, apply to all Personnel:

### **A. General Standards.**

- Honesty and Lawful Conduct. Personnel must be honest and truthful in all of their dealings. Personnel must avoid doing anything that is, or might be, against the law. Personnel who are unsure whether an action is lawful,

should, prior to action, review it with the appropriate administrator, director, supervisor or the Compliance Officer.

- Respect for Individuals Served. Personnel must fully respect the rights of the individuals served, including their rights to privacy, respect, dignified existence, self-determination, participation in their own care and treatment, freedom of choice, ability to voice grievances, and reasonable accommodation of client needs. All clients shall be provided a Notice of their rights upon admission to any GCASA program.
- Confidentiality. Personnel must keep all information concerning the individuals they serve in strict confidence in keeping with all confidentiality laws and regulations including HIPAA, the HITECH Act, federal laws covering substance abuse treatment records and GCASA's confidentiality policies and procedures. Such information shall not be disclosed to anyone unless authorized by the individual or their representative, or otherwise as permitted or required by law. Open and closed records, in both electronic and paper formats, must be handled as confidential by the standards cited above. All personnel are expected to maintain the integrity all service records. All questions about these policies and procedures should be directed to the Compliance Officer.
- Business Information. Personnel may not disclose or release any confidential information relating to GCASA's operations, pending or contemplated business transactions, employee lists, confidential personal information, data maintained by the Organization, and/or trade secrets without the prior authorization of the appropriate administrator, director or supervisor. All confidential information is to be used for the benefit of the Organization and the individuals it serves, and is not to be used for the personal benefit of Personnel, their families, or friends.
- Organization's Assets. All of the Organization's assets shall be used solely for the benefit and purpose of Organization. Personnel with access to cash must adhere to internal control procedures at all times and refrain from misappropriating the Organization's funds. Personal use of Organization's assets is not allowed unless disclosed to and approved by the Compliance Officer following consultation with the appropriate administrator, director or supervisor.
- Non-Discrimination. Personnel shall not discriminate based on the recipient's gender, race, sexual orientation, gender expression, religion, creed, military status, national origin, marital status, disability, status as a victim of domestic violence, source of payment or sponsorship, or other protected classes.

**B. Billing for Services.**

- Accurate and Truthful Claims and Reports. Claims submitted for payment must be accurate and truthful, and reflect only those services and supplies

that were properly ordered and provided. Expense reports, reimbursement requests, and financial statements must be prepared as accurately as possible, and adequate documentation must exist to support information provided in the reports. No individual shall willfully or purposefully misrepresent any financial data, reports or reimbursement requests. Non-allowable costs must be appropriately identified and removed, and related party transactions must be treated consistent with applicable laws and regulations.

- Coding. Coding of services shall accurately reflect the services rendered. Personnel who perform coding and billing shall receive training regarding current regulations and codes annually or more frequently as needed. Such training will be provided internally or externally to affected employees, as appropriate. The training is intended to incorporate compliance concepts and updates of regulatory information needed to ensure that employees are current in their knowledge. Suspected errors in coding or billing should be reported to the administrator, director, supervisor or the Compliance Officer.
- Ordered Services. All services ordered, provided, and billed must be appropriate to the quantity and type of service provided. All services ordered, provided, and billed must be believed by the Organization's Personnel in good faith to be reasonable, medically necessary, and in compliance with regulations.
- Verification of Coverage/Copays. To the best of Personnel's ability, insurance coverage and benefits shall be verified. Any changes in coverage, or changes in benefits, learned from a source other than the individual receiving service, shall be promptly communicated to the individual and/or the individual's family. Personnel shall comply with the requirement that Medicaid is a payor of last resort, shall ascertain that other payors are not primary before billing Medicaid deductibles and that copays have been paid.
- Adequate Documentation & Records. Billing of services must be based on complete, accurate and adequate documentation in the associated records to support the services provided, in accordance with applicable laws and regulations and third-party payor requirements. The term "records" includes all documents, both written and electronic, relating to services provided by the Organization. All documentation must be completed by Personnel in a timely manner. Records must reflect the actual service provided. All corrections or additions to records must reflect the date of the addition or correction, the name, signature, and title of the person making the correction or addition, and the reason for the correction or addition if not apparent. No person shall ever sign the name of another person to any document. Electronic signatures are accepted. Signature stamps shall not be used. Backdating and predating documents is unacceptable and will lead to discipline up to and including termination of employment.



- Inadequate or Substandard Care or Services. Claims for payment shall not be knowingly submitted for inadequate, substandard or unsubstantiated care or services.
- Excluded Providers. Claims for items or services furnished by an individual or entity that has been excluded from participation in a federal or state health care program shall not knowingly be submitted for payment.
- Record Maintenance and Retention. Personnel must record and report all Organization, client and financial information fully, accurately and honestly. All identifying and demographic information will be accurately entered into the chart and supported by a photo ID of the client. Records include, but are not limited to, progress notes and other documentation for the individuals the Organization serves, accounting books, billing records, timesheets, expense reports, vouchers, bills, payroll, correspondence and others. All relevant information must be included in a format that complies with all applicable Organization policies and procedures, and laws and regulations, and no relevant information shall be concealed or omitted. Records that contain confidential health information will be kept according to federal and state regulations addressing such records. Under no circumstances will a record be tampered with, altered, or destroyed to gain any perceived advantage for the Organization. Closed cases will be archived in accordance with regulations. Records that demonstrate the right to receive payment, including medical records, must be retained for ten (10) years. Records slated for destruction will be shredded in accordance with HIPAA regulations.

**C. Improper Payment or Gifts.**

- Credit Balances. A “credit balance” is an excess or improper payment as a result of billing or claims processing errors. If a department or program knows that it has received payments from a government agency or unit, private payor, or recipient of service for which it was not entitled, such payments shall be promptly refunded to the appropriate payor or recipient.
- Receipt of Payments and Gifts. Personnel may not accept any gifts, gratuities or tips from any individual (or their family) served by the Organization or from any individual or entity outside of the Organization, such as contractors and vendors, that are intended, or could be construed as intending, to influence the staff member’s actions and decisions.
- Compensation for Services to Others. Personnel may not accept compensation received for services provided to other individuals/organizations during normal work time at the Organization. All compensation should be paid directly to the Organization.
- Outside Employment. All staff will be expected to sign an attestation statement at the time of hire, and annually thereafter, that states they are not

engaged in outside employment that could be perceived as a conflict of interest.

- Honoraria. During work time or when functioning as a representative of the Organization, personnel may not accept any personal honoraria or compensation while participating as faculty, speaker at educational programs or in development of publications.
- Payment of Items or Gifts. Personnel may not give anything of value, including gratuities, bribes, kickbacks, or payoffs, in any form, to any government representative, fiscal intermediary, carrier, contractor, vendor, or any other person in a position to benefit the Organization in any way.
- Exception for Nominal Value. Personnel may provide or receive ordinary and reasonable business entertainment and gifts of nominal value, if those gifts are not given for the purpose of influencing the business behavior or clinical evaluation of the recipient. “Nominal value” is defined by the federal Office of the Inspector General as no more than \$10.00 per gift or \$50.00 per year per person.

**D. Medical Necessity and Quality of Care and Services.**

- Delivery of Care and Services. All clients served by the Organization will be afforded the care and services necessary to attain or maintain the highest possible physical, mental, and psycho-social well-being. All clinical staff will be trained to evaluate and provide appropriate services and are encouraged to seek guidance from management or other senior staff members regarding any areas of question or concern. An individual’s identified needs and goals will drive any decisions related to the provision of services. In cases where there is a question of medical necessity and/or medical efficacy, the clinician, the Program Director, the Director of Treatment Services, or a member of the appropriate review team should ask for a review of the case.
- Ability to Provide. The Organization will refer individuals and their families to other appropriate providers when it cannot provide for the individual’s identified needs and goals.
- Medical and/or Educational Necessity. Medical care and clinical services shall be based on medical necessity and professionally recognized standards of care. Non-medical services shall be based on the programmatic requirements for those services.
- Appropriate Treatment and Service. The Organization shall provide appropriate and sufficient treatment and services to address individuals’ clinical conditions in accordance with their plans of care and professional standards of practice. All Personnel shall be informed of, and protect and preserve, the basic rights of individuals served by the Organization. Personnel must interact with all individuals in an honest and ethical manner.

Personnel shall provide services respectfully to an individual and their cultural, religious, or ethics background, and shall strive to continuously improve their understanding of all cultures. Care should be taken that intentions of staff using interventions designed to be supportive, such as hugging or handholding, are clearly understood by the client.

- Continuous Quality Improvement. The Organization shall establish processes to measure and improve the quality of its care and services, and safety of the individuals served. To the extent possible, the Organization's quality assessment and improvement processes shall be coordinated with its Compliance Program.
- Accountability. Personnel shall be responsible for being knowledgeable, balancing individual needs, allowable benefits, and limited resources in providing services, supervision, and case management.
- Audit and Regulatory Review Performance. Personnel shall strive for deficiency-free audits and regulatory reviews. Any deficiencies identified by state, federal or national agencies may reflect noncompliance with applicable laws and regulations or required standards. Therefore, current and past audits and reviews should be periodically reviewed in order to identify specific risk areas, and where appropriate, incorporate corrective action into the program's policies, procedures, training and monitoring.

#### **E. Professional Practices.**

- Behavior of Personnel. Personnel shall seek to model appropriate and acceptable behavior to the individuals served and shall maintain professional boundaries with all such individuals, both in and out of the office. Personnel shall not share their personal information with the Organization's clients, including phone numbers and addresses.
- Operation Within Scope of Practice. All licensed staff will be expected to work within their license's scope of practice and adhere to the license's Code of Conduct and Ethical Requirements.
- Prohibited Activities. Personnel shall not engage in any activity that constitutes abuse or neglect and shall refrain from working under the influence of alcohol, illegal substances, or prescription/non-prescription medications. Personnel are prohibited from possessing a firearm or weapon of any type at any of the Organization locations or satellite sites. Personnel are also prohibited from selling or distributing drugs (prescription or otherwise), alcohol, or other illegal substances to any individual receiving services from the Organization. Organization will not tolerate harassment by anyone based on the diverse characteristics or cultural backgrounds of those with whom we work. Any verbal or physical conduct including cursing, obscene and insulting language or conduct of a sexual nature creates an intimidating, hostile, or offensive work environment and will not be tolerated.

- Solicitation. Solicitation by one employee of another employee is prohibited while either individual is on working time, with the exception of activities related to raising funds for Organization-related functions. The distribution of material of any kind is prohibited on working time, and is also prohibited in working areas at any time. This includes distribution through office mail or electronically. For purposes of this rule, break room areas are not considered work areas. Non-employees are prohibited from soliciting or distributing to employees for any purpose at any time on the Organization property, with the exception of individuals associated with the United Way annual campaign.
- Abusive Practices. Personnel shall not intentionally prescribe or administer improper medications, or have any intentional personal physical contact with, or engage in psychological abuse of, an individual that causes or has the potential to cause harm. Personnel must also refrain from any activity that could constitute sexual harassment, and may not engage in sexual contact or allow or encourage sexual contact with any individual receiving services from the Organization.

**F. Governance.**

- Board Oversight. The Board of Directors shall exercise reasonable oversight over the implementation of the Compliance Program and ensure that it receives appropriate information in a timely manner as is necessary and appropriate. The Board of Directors duty of “reasonable oversight” includes, but is not limited to, the duty to make reasonable inquiry when presented with extraordinary facts or circumstances of a material nature (i.e. indications of financial improprieties, self-dealing, or fraud) or a major governmental investigation.

**G. Conflict of Interest.**

- Conflict of Interest. Personnel must disclose any actual or potential conflict of interest to ensure that the integrity of the Organization’s operations is not compromised. All Personnel must disclose to the Compliance Officer any financial interest that they or a member of their family have in any entity that does business or competes with the Organization in any manner in accordance with Organization’s Conflict of Interest Policy.
- Performing Work or Providing Services for Competitor or Colleague. All Personnel are advised to be especially sensitive to the potential for a conflict of interest or a violation of this Code of Conduct in performing work or providing services for any competitor or colleague organization of the Organization. Personnel are strongly reminded of their personal and professional responsibilities to adhere to this Code of Conduct and should immediately discuss any concerns or questions about a conflict of interest with the Compliance Officer.

## **H. Tax Exempt Status.**

- Maintaining Tax Exempt Status. The Organization is a not-for-profit corporation that has been granted exemption from federal and state income tax. In order for the Organization to maintain its tax-exempt status, the Organization and its Personnel shall not engage in any activity, including use of funds and/or resources (e.g., staff time), for political activities or fundraising, or other activities that violate the requirements for tax exempt corporations.

## **I. Mandatory Reporting.**

- Abuse, Neglect, Mistreatment. Individuals receiving services will be free from abuse, neglect and mistreatment. Any allegations of abuse, neglect or mistreatment must be immediately reported to the appropriate administrator, director or supervisor, and other officials as required by law, and investigated in accordance with applicable policies, rules, and regulations.

## **J. Credentialing.**

- Background Checks. GCASA, through its Human Resources Department, shall screen prospective personnel prior to engaging their services, against websites which provide information on excluded individuals and entities, criminal backgrounds, and professional licensure and certification<sup>3</sup>. Screening shall be done at the start of the individual's or entity's relationship with GCASA, and every 30 days thereafter, to ensure that such individuals and entities have not been excluded, convicted of a disqualifying criminal offense, or had their licensure or certification suspended, revoked or terminated since the initial screening.
- Fingerprinting. In accordance with New York State Law, all persons hired to work in an OASAS or OMH licensed program, who will have regular and substantial unsupervised contact with clients must consent to background fingerprinting. These fingerprints will be taken at a designated site, who will submit them to Department of Criminal Justice Services ("DCJS"). DCJS will advise the provider whether or not the applicant has a criminal history that precludes employment. In cases where a person is denied employment because of this information, the applicant has a right to explain, in writing, why they should not be denied employment. If OASAS/OMH maintains its determination that the applicant should not be employed, the applicant will be notified that employment is denied because of the information obtained in the criminal background history. The applicant has the right to obtain, review, and seek correction if such information in accordance with DCJS regulations.

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<sup>3</sup> Licensure will be verified with the NYS Department of Education, OASAS and the CRC database. In addition, all Personnel shall be screened to ensure they are not excluded individuals/entities and all Personnel providing direct care to individuals receiving services from the Organization shall undergo criminal background checks.

- Driver Checks. Staff hired to drive clients, whether in an Organization or personal vehicle, will consent to a driver's license background check through the NYS Department of Motor Vehicles, prior to the time of hire. In addition, Organization will contract with an outside vendor who will monitor state DMV records and report to Organization when an employee is identified as having a driving infraction. In cases where the Organization is notified that an employee has received a driving infraction, continued employment will be based on the nature and severity of the infraction. In addition, staff hired or contracted to drive in the Organization's transport program will be randomly drug tested in accordance with applicable regulations.
- NYS Statewide Central Register of Child Abuse and Maltreatment. All direct care staff in both OASAS and OMH licensed programs will be checked at the time of hire against the NYS Central Registry List, as indicated.
- Physicians. For physicians and other healthcare practitioners, the Organization shall also consult the New York State Board of Ed and verify the physician's license at [www.nysed.gov](http://www.nysed.gov).
- Other Personnel. For all applicable employees, Board members, and contractors, Organization shall consult the Lists of Excluded Individuals/Entities at:
  - (1) U.S. Office of Inspector General: <https://sam.gov/content/exclusions>;
  - (2) Government Services Agency: [https://oig.hhs.gov/exclusions/exclusions\\_list.asp](https://oig.hhs.gov/exclusions/exclusions_list.asp); and
  - (3) the NYS Office of the Medicaid Inspector General: <https://omig.ny.gov/medicaid-fraud/medicaid-exclusions>.
- Director, Employee, and Contractor Certifications. The Organization shall require all potential directors, employees, and contractors to certify that they have not been arrested for or convicted of any criminal offense and that they have not been excluded from participation in any federal or state health care program. The Organization shall require all employees, Directors, and contractors to report to Organization if, subsequent to their employment or commencement of Board of Director service or a contractual relationship, they are convicted of a criminal offense or that they have been excluded from participation in any federal or state health care program.

**K. Business Practices.**

- Improper and Illegal Means. The Organization will forego any business transaction or opportunity that can only be obtained by improper or illegal means, and will not make any unethical or illegal payments to anyone to

induce the use of Organization's services. No employee will collude with a client to present false or misleading information to another party.

- Business Records. Business and financial records must be complete, accurate and truthful, with no material omissions. The Organization's assets and liabilities must be accounted for properly in compliance with all tax and financial reporting requirements. The Organization's external and internal financial statements must be prepared in accordance with Generally Accepted Accounting Principles and annually subject to an external audit by independent Certified Public Accountants.
- Computer Resources and Internet Use. All Personnel who use the Organization's computer server and information systems assume the responsibility for using these resources in an appropriate manner and in accordance with the Organization's policies and procedures. The Organization owns all information communicated or stored via computer. The computers are Organization tools and are to be used only for Organization business.

Personnel may not access the Internet at work to post, store, transmit, download, or distribute any threatening; knowingly, recklessly, or maliciously false; or obscene materials including anything constituting or encouraging a criminal offense, giving rise to civil liability, or otherwise violating any laws. Additionally, this channel of communication may not be used to send chain letters, personal broadcast messages, or copyrighted documents that are not authorized for reproduction; nor are they to be used to conduct a job search or open misaddressed mail. Personnel who abuse our communications systems may lose these privileges and be subject to disciplinary action. Personnel using the Organization's electronic and telephonic communications systems have no expectation of privacy in such use. Personnel using the Organization's electronic and telephonic communications systems for personal purposes are responsible for the costs of such use (*e.g.*, phone charges, fax line charges, etc.).

Personnel are not permitted to use a code, access a file, or retrieve any communication stored on the Organization's systems unless they have received prior permission to do so from the administration. Personnel are prohibited from running a personal business on the Organization system. Personnel also may not send, save, view, or access offensive material, including but not limited to sexual or racial jokes, comments or images, or any other jokes, comments or images that would offend someone based upon their race, color, religion, sex, age, national origin, marital status, disability or other status protected by law. Personnel who violate this policy will be subject to disciplinary action, up to and including termination.

Personnel are not allowed to share any issued password or code for any system (computer, phone, security, etc.). Personnel that shares their password or code with any other individual may be subject to disciplinary action.

Authorized representatives of the Organization may monitor and access use of these systems from time to time. This may include, but is not limited to, monitoring Internet usage and e-mail and voicemail messages entering, leaving, or stored on the Organization's system.

- Portable Electronic Device Security. Organization employees may use Portable Electronic Devices and personal computers (collectively, "Devices") to access, and transmit Electronic Protected Health Information (EPHI) and confidential business information when such Devices are properly safeguarded to prevent unauthorized use and disclosure of the information. Employees will only have access to stored EPHI through the Organization's portal. The Organization's policies on confidentiality and security of information apply regardless of how the information is captured or stored and regardless of the ownership of the Device. All Organization personnel must protect all EPHI and confidential business information contained on their Devices. Federal and state regulations governing Confidentiality and Drug Abuse Patient Records require Organization and its employees to safeguard the confidentiality, integrity, and availability of EPHI that they create, receive, maintain, and transmit on their Devices in accordance with Organization's Security Policies.
- Loans. Appropriate Organization Personnel shall maintain familiarity with all terms, conditions, and covenants contained in any loan/financing agreement, and shall refrain from any activity in direct conflict or breach of the terms, conditions, or covenants. Financial loans to or from any individual or business (other than recognized financial institutions and foundations) that furnish or receive supplies or services to or from the Organization are prohibited.
- Purchasing. Purchasing decisions must be made with the purpose of obtaining the highest quality product or service for the Organization at the most reasonable price. No purchasing decision may be based on considerations that Personnel, or their family member or friend, will benefit.
- Marketing and Referrals. All Personnel must refrain from improper or high-pressure individual solicitation or marketing. Personnel must be truthful in the representations they make with respect to the Organization's services, and never agree to offer anything of value in return for new business or referrals.
- Relationships with Other Providers. Contracts, leases, and other financial relationships with physicians, clinics, hospitals, or other medical providers and suppliers who have a referral relationship with the Organization will be based on the fair market value of the services or items being provided or exchanged, and not on the basis of the volume or value of referrals of Medicare or Medicaid business between the parties. Free or discounted services or items shall not be accepted or provided in return for referrals.



## **L. Scope and Application of Standards to Personnel.**

- Responsibility of All Personnel. All Personnel are expected to be familiar with, and comply with, all federal and state laws, regulations, and rules that govern the duties that govern their jobs. Personnel are also expected to comply with the Organization's Compliance Program (including the Code of Conduct) and any applicable departmental and other compliance-related policies and procedures. Strict compliance with such standards is a condition of employment and/or relationship with the Organization, and violation of any of these standards will result in discipline, up to and including termination of employment or relationship with GCASA.
- Administrators, Directors and Supervisors. All administrators, directors and supervisors have the responsibility to help create and maintain a work environment in which ethical concerns can be raised and openly discussed. They are also responsible to ensure that the employees they supervise understand the importance of the Compliance Program (including the Code of Conduct). The failure of administrators, directors and supervisors to so instruct their subordinates or to take reasonable measures to detect non-compliance by their subordinates will result in discipline, up to and including termination of employment.
- Departmental Compliance Policies and Procedures. In addition to the Compliance Plan (including the code of conduct) and Compliance Program, many of the departments have specific compliance policies and procedures. These additional policies and procedures are an integral part of the Compliance Program and are designed to complement the standards set forth in this Compliance Plan.

## **III. COMPLIANCE PROGRAM STRUCTURE AND OVERSIGHT.**

The Organization's compliance structure includes establishment of a Compliance Committee, appointment of a Compliance Officer and a direct reporting line for compliance matters to the Organization's Chief Executive Officer and Board of Directors. All of these individuals or groups are firmly committed to supporting affected Personnel in meeting the standards set forth in the Compliance Program.

### **A. Compliance Officer.**

1. Authority and Duties. Organization's Compliance Officer is a key member of the Management Team, who is the focal point for GCASA's Compliance Program, and is responsible for the day-to-day operation of the Compliance Program, for receiving, investigating and responding to all reports, complaints, and questions about compliance issues, and for oversight of regulatory compliance for all services provided by Organization's Personnel. The Compliance Officer maintains regulatory resources, oversees implementation of the Compliance Program, responds to and acts on issues of potential non-compliance, and functions as a liaison to the Board of Directors.

The Compliance Officer shall possess the experience, training and integrity necessary to fulfill the responsibilities of the position. Such training and experience shall be in areas such as compliance and operations, including the business process of compliance, and shall reflect an understanding of the laws, regulations and standards applicable to the programs and services offered by Organization. The Compliance Officer may be assigned other duties, so long as such other duties do not hinder the Compliance Officer in carrying out their primary compliance-related responsibilities. If any other work duties of the Compliance Officer create any conflict with their ability to function as Compliance Officer, whether due to a conflict of interest or as a result of time limitations, or otherwise, the Compliance Officer shall simultaneously report same to both Organization's Chief Executive Officer and the Chair of Organization's Board of Directors. The Compliance Officer shall have direct access to both the Chief Executive Officer and the Board.

The Compliance Officer shall, with the assistance of other Personnel, as appropriate:

- Develop, revise, maintain, and supervise the implementation of policies, procedures, and practices designed to ensure compliance with the Corporate Compliance Program and HIPAA Privacy Program policies, and all applicable laws and regulations;
- Promote compliance with, and adherence to, the Organization's Code of Conduct, policies and procedures and applicable laws, rules, and regulations;
- Facilitate communication and activities on compliance matters throughout the Organization;
- Develop and coordinate educational and training programs and materials for all Personnel;
- Monitor federal and state agency websites (e.g., OIG, OMIG, OMH, and OASAS) for guidance, reports, and other publications to prevent potential areas of weakness in compliance;
- Access resources within and without the Organization to effectively recommend revision of, and implement and monitor, the Compliance Program and HIPAA Privacy Program. The Compliance Program, and all future revisions thereof, shall include information about the organization and operation of the Organization and its programs to best assess compliance and to identify areas of weakness. Accordingly, the Compliance Officer shall have access to all relevant documents, systems and records necessary to fulfill their obligations and duties;
- Secure support from the Chief Executive Officer and Board of Directors for compliance initiatives including incentivizing the reporting of compliance concerns and assuring that no intimidation or retaliation for such reporting activities occurs;
- Conduct and facilitate internal audits to evaluate compliance and assess internal controls;

- Monitor all methods of communication and develop and ensure the effective implementation of a confidential and anonymous system through which Organization's Personnel may express compliance concerns, and ensure that those concerns are appropriately addressed;
- Investigate and independently act on matters related to the Compliance Program, including compliance inquiries, Report Line and Suggestion Box complaints and, if appropriate, develop corrective action plans, including self-disclosure reporting to New York Department of Health (DOH) and the New York State Office of the Medicaid Inspector General (OMIG), as applicable and if appropriate. The Compliance Officer shall be responsible for designing and coordinating internal investigations and documenting, reporting, coordinating, and pursuing any resulting corrective action with all internal departments, contractors, and the State;
- Ensure that the Human Resources Department screens prospective personnel including regular background checks of employees, board members, vendors and consultants against all available databases listing excluded parties under state and federal fraud and false claim legislation in accordance with this Compliance Plan;
- Ensure that affected Personnel who furnish medical, nursing, or other care or services to Organization's clients are aware of the Compliance Program's requirements;
- Disseminate information on Organization's Compliance Program to affected Personnel of the Organization;
- Report to and work with the Chief Executive Officer and the Board of Directors in periodically reviewing and modifying the Compliance Program, including the Code of Conduct, compliance policies and procedures, and the HIPAA Privacy Program, to reflect the evolving nature of applicable laws and regulations and the priorities of Organization, and to promptly incorporate changes based on GCASA's Organizational Experience and changes to federal and state laws, rules, regulations, policies, and standards;
- Assist management in review of Organization's contracts for compliance with applicable laws and regulations, and in confirming the qualified status of contractors, including review by counsel as appropriate;
- Coordinate and oversee the: (1) compliance initiatives of Organization's Departments; (2) audits and investigations conducted by government agencies; and (3) Compliance-related Corrective Action Plans and Preventive Action Plans;
- Maintain documentation of the following: internal and external audit and investigation results, logs of Report Line calls and their resolution, corrective action plans, due diligence efforts with regard to business

transactions, records of compliance training, and modification and distribution of policies and procedures, and other logs, spreadsheets, and records of compliance activities;

- Attend conferences, meetings or seminars designed to enhance understanding of the effective development and implementation of the Compliance Program and identification and management of risk areas;
- Work with the Chief Executive Officer to access outside counsel and consultants where necessary and appropriate;
- Monitor results of compliance-related disciplinary actions to confirm fair and firm enforcement;
- Work with the certifying official identified on the annual New York State Social Services Law (SSL) and Deficit Reduction Act (DRA) certifications to ensure accurate completion of the certification on Office of the Medicaid Inspector General's (OMIG) website;
- Oversee and monitor the adoption, implementation, and maintenance of the Compliance Program and evaluating its effectiveness;
- Draft, implement, and update a compliance work plan which outlines GCASA's proposed strategy for meeting regulatory requirements for the coming year. The work plan shall include a specific emphasis on written policies and procedures, training and education, auditing and monitoring, and responding to compliance issues, and shall be drafted, implemented, and updated no less frequently than annually, and as otherwise necessary to confirm to changes in federal and state laws, rules, regulations, policies, and standards;
- Report directly, on a regular basis, but no less frequently than quarterly, to GCASA's Board of Directors, Chief Executive Officer, and Compliance Committee on the progress of adopting, implementing, and maintaining the Compliance Program; and
- Assist GCASA in establishing methods to improve the Organization's efficiency, quality of services, and reducing its vulnerability to fraud, waste, and abuse.

The Compliance Officer's ultimate scope of authority and duties shall be determined by the Chief Executive Officer and the Board of Directors in accordance with Compliance Program requirements. The Compliance Officer shall report directly and be accountable to GCASA's Chief Executive Officer. GCASA shall ensure that:

- The Compliance Officer is allocated sufficient staff and resources to satisfactorily perform their responsibilities for the day-to-day operation of the Organization's Compliance Program based on GCASA's Compliance Risk Areas and Organizational Experience; and

- The Compliance Officer and appropriate compliance personnel have access to all records, documents, information, facilities, and Personnel that are relevant to carrying out their Compliance Program responsibilities.

2. Distributing Responsibility. The successful implementation of the Compliance Program requires the distribution of compliance responsibilities throughout Organization. As such, the Compliance Officer may seek the assistance of the Compliance Committee, Chief Executive Officer, general counsel or others in discharging such responsibilities, and develop a system that distributes the responsibilities and establishes accountability for performing such responsibilities.

3. Reporting. Compliance issues are to be reported to Organization's Compliance Officer. Depending upon the findings, issues will be brought to the attention of the Chief Executive Officer, the Compliance Committee and/or the Board of Directors. The Compliance Officer shall regularly report on Organization's compliance activities to the Chief Executive Officer, Compliance Committee and to the Board of Directors, as appropriate but at a minimum of quarterly.

## **B. Corporate Compliance Committee.**

1. Appointment and Authority. The Board of Directors has appointed a Corporate Compliance Committee to advise the Compliance Officer, coordinate with the Compliance Officer to ensure that GCASA is conducting its business in an ethical and responsible manner, and provide oversight in the implementation of the Compliance Program. The Corporate Compliance Committee ("Compliance Committee") consists of the Compliance Officer, Director of Finance and Administration, Directors of Treatment and Residential Services, Director of Development and Public Relations, and Human Resources and IT Department representatives. Membership in the Committee shall, at a minimum, be comprised of senior managers. At all times, GCASA shall maintain a list of Compliance Committee members including their names, titles, and dates of service on the Committee.

The Organization's Compliance Officer reports directly to the Chief Executive Officer and to the Board of Directors. Through the Compliance Officer, the Compliance Committee shall report to the Board of Directors, as appropriate, and at minimum, on an annual basis. The Compliance Committee reports directly to, and is accountable to, GCASA's Chief Executive Officer and Board of Directors.

2. Compliance Committee Charter. The Compliance Committee's duties and responsibilities, membership, designation of a chair, and frequency of meetings shall be outlined in a Compliance Committee Charter. The Compliance Committee Charter shall be reviewed and updated on at least an annual basis.

3. Authority and Duties. The scope of the Compliance Committee's authority and duties shall be determined by the Board of Directors in accordance with the Compliance Program and modified from time to time as the Compliance Program is evaluated. Under the direction of the Compliance Officer, the Compliance Committee's primary duties are:

- Assessing existing policies and procedures that address identified risk areas and modifying the policies and procedures as needed;

- Working with the Compliance Officer to develop or modify standards of conduct, and policies and procedures that address specific risk areas to promote compliance with legal and ethical requirements, and advocating for adoption and implementation of required modifications to the Compliance Program;
- Coordinating with the Compliance Officer to ensure that the written policies and procedures, and Code of Conduct are current, accurate, and complete;
- Establishment of annual Organization-wide and program specific Compliance activities;
- Under the direction of the Compliance Officer, advising and monitoring appropriate departments relative to compliance matters;
- Developing internal systems and controls to carry out compliance initiatives to ensure implementation of compliance standards and policies;
- Recommending and monitoring internal and external audits to identify potential non-compliant issues;
- Participating in developing a process to evaluate and respond to compliance-related complaints and problems;
- Receiving, reviewing, and recommending appropriate responses to reports of actual or potential non-compliance with applicable laws, regulations, the Code of Conduct, and policies and procedures in coordination with the Compliance Officer and with the assistance of counsel as necessary;
- Regular consultation with the Compliance Officer;
- Coordinating with the Compliance Officer to ensure communication and cooperation by Personnel on compliance related issues, internal or external audits, or any other function or activity required by applicable regulation;
- Advocating for the allocation of sufficient funding, resources, and staff for the Compliance Officer to full perform their responsibilities; and
- Ensuring that GCASA has effective systems and processes in place to identify Compliance Program risks, overpayments, and other issues, and effective policies and procedures for correcting and reporting such issues.

4. Meetings. The Compliance Committee shall meet quarterly or as deemed necessary and appropriate by the Chief Executive Officer or the Compliance Officer to review the status of the Compliance Program, assist in identifying risk areas, present and discuss potential compliance concerns and issues and recommend changes to the Compliance Program. At each meeting, the Compliance Committee shall receive a report from the Compliance Officer on the progress of adopting, implementing, and maintaining the Organization's Compliance Program.

5. Record of Proceedings. The Compliance Committee shall record the proceedings of the Compliance Committee and issue written minutes. Minutes of the Compliance Committee shall be distributed to the Compliance Committee. Said minutes shall be retained for a period of six (6) years from the date of the Compliance Committee meeting.

6. Coordination of Enforcement Efforts. The Compliance Committee shall have the responsibility to ensure that enforcement of the Code of Conduct and the applicable policies and procedures of the Organization as expressed in this Compliance Plan is achieved consistent with the due process rights afforded to individuals pursuant to applicable laws, regulations, and Bylaws.

7. Corrective Action Plans. Subject to the Compliance Officer's authority to independently act on matters related to the Compliance Program, including the pursuit of required corrective action, the Management Team, under the direction of the Compliance Officer, the Chief Executive Officer and General Counsel as needed, will develop corrective action plans to address any instances of non-compliance. Such corrective actions plan must adhere to the compliance policies as set forth in this Compliance Plan and adhere to laws and regulations applicable to the subject matter of the plan. A summary of compliance activities—including the general subject matter and timetable—will be presented to the Compliance Committee at every meeting.

8. Departmental Coordination. The Compliance Committee shall be responsible for coordinating compliance efforts among Organization's Personnel to: (i) identify existing and future compliance initiatives; and (ii) coordinate such initiatives with the Organization's Compliance Program and ensure conformity of all such initiatives with the policies and procedures set forth in Organization's Compliance Program.

#### **IV. WRITTEN POLICIES AND PROCEDURES.**

GCASA shall have written policies, procedures, and a Code of Conduct, as well as a process for drafting, revising, and approving the same. The written policies and procedures will be available, accessible, and applicable to all Affected Individuals. The written policies and procedures, and Code of Conduct, will be reviewed at least annually to determine:

- If the written policies, procedures, and Code of Conduct have been implemented;
- Whether Personnel are following the policies, procedures, and Code of Conduct;
- Whether the policies, procedures, and Code of Conduct are effective; and
- Whether any updates are required.

## V. COMPLIANCE TRAINING AND EDUCATION.

All Personnel shall receive training on the Organization's policies and procedures, including the Compliance Program, the expectations of the Organization's management with respect to compliance, and such other compliance matters. Training and education will include guidance on dealing with compliance issues, how to communicate compliance issues to appropriate compliance personnel, and guidance on how potential compliance problems are investigated and resolved. The Organization believes all Personnel should have the educational tools necessary to perform their roles in a compliant and quality-driven manner. The Compliance Officer, in coordination with management, is responsible for setting the annual Employee and Personnel Training Calendar. Using audit and monitoring feedback, the trainings are customized to the organization and tailored to the educational backgrounds of the targeted Personnel. Trainings will use a variety of presentation methods, including web-based, didactic, interactive, and group programs.

Training shall be provided by qualified individuals and shall be delivered in accordance with the following provisions. Additionally, all training and education shall be provided in a form and format accessible and understandable to all Personnel, consistent with federal and state language and other access laws, rules, or policies.

**A. Applicability.** All affected Personnel shall participate in training and education on the Compliance Program. Training programs should include sessions summarizing the Code of Conduct, Organization's Compliance Program requirements, fraud and abuse laws, federal and state health care program and private payor requirements, clinical best practices, and Organization policies and procedures. Any Personnel may suggest a topic for training and education by contacting the Compliance Officer. Attendance at compliance training sessions shall be mandatory and a condition of continued employment.

All training programs will include an overview of all elements of the Compliance Program as described in the Compliance Plan and compliance policies. All Compliance Program training and education will include, at a minimum, the following topics:

- GCASA's Compliance Risk Areas and Organizational Experience;
- GCASA's written policies and procedures related to its Compliance Plan and Compliance Program;
- The individual's obligation to participate in GCASA's Compliance Program;
- The types of issues that constitute Compliance Issues (actual or suspected fraud, waste, abuse, or other improper or unethical conduct, violations of law, regulations, administrative guidance, or GCASA's Compliance Plan or policies);
- The individual's obligation to report Compliance Issues in good faith and methods for reporting (including method for anonymous and confidential reporting) to the Compliance Officer and others;



- The individual's ability to ask questions regarding GCASA's Compliance Program and Compliance Plan;
- The Compliance Officer's and Compliance Committee's role and their interactions with management and the Board of Directors;
- How internal and external audits and investigations are handled and an individual's obligation to assist in audits and investigations as requested;
- The various types of remedial measures and corrective action plans for non-compliance, including how GCASA responds to compliance issues and implements corrective action plans;
- The consequences of failure to comply with GCASA's Compliance Plan and Compliance Program (*i.e.*, discipline, termination, liability) and information about GCASA's non-intimidation and non-retaliation policies;
- The responsibilities of supervisors/managers to detect and report compliance issues;
- The requirements specific to the Medicaid Program and GCASA's categories of service;
- An overview of relevant laws and requirements, including requirements related to reporting overpayments; and
- If applicable, coding and billing requirements and best practices, and the claim development and submission process.

**B. Frequency.** Compliance Program training shall be made a part of the orientation for Personnel, contractors, and members of the Board of Directors and shall thereafter occur periodically. All Personnel will participate in training at the time of hire, contracting, or appointment (within 30 days) and at least annually thereafter. Training shall also be set up for all Personnel to address changes in applicable laws, regulations, policies and initiatives. Additional training information or materials will be disseminated at regular staff meetings or through other means. Personnel will be notified via email and/or flyers of all required and elective trainings and will be required to sign an attendance sheet. Training shall be ongoing, but provided at least annually to affected Personnel to incorporate new statutes, regulations, historical compliance matters, and identified risk areas. Both orientation and annual training will cover each of the topics set out in Section V(A), above. All Personnel will be required to acknowledge in writing that they have received training, understand GCASA's Code of Conduct, and agree to fulfill their obligations under the Compliance Plan.

Adherence to the requirements of continuing education and training will be considered in the overall evaluation of the performance for each individual associated with Organization. Failure to participate may result in disciplinary action which may consist of a written warning, up to and including possible termination of employment, subject to due process, and legal and contractual rights, if any, applicable to such individual.

**C. Targeted Training.** In addition to general compliance training and education, face-to-face training and targeted compliance training that is tailored to particular individuals and departments covering identified risk areas will be provided. This customized targeted compliance training will be in addition to the initial and annual compliance training and education provided to all employees, Board members, and contractors. Such training is mandatory.

**D. Training for Agents and Contractors.** The Organization mandates that all organizations acting as agents on its behalf, such as consultants, contractors, agents, subcontractors, and independent contractors (collectively, “contractors”), will comply with the Compliance Program. Contractors who are affected by GCASA’s Compliance Risk Areas must participate in compliance training either prior to contracting with GCASA or within 30 days of contracting with GCASA, and at least annually thereafter. The compliance training given to contractors will cover, at a minimum, each of the training and education program areas set forth in Section V(A), above. The training may consist of providing the contractor with GCASA’s Compliance Plan, Compliance Program policies and procedures, and Code of Conduct for self-study, and affording the contractor the opportunity to ask questions and receive responses about the Compliance Plan and Compliance Program. GCASA shall maintain a dated distribution letter and require contractors to complete an acknowledgement evidencing that compliance training and education occurred. Contractors are expected to perform their duties in compliance with all Compliance Program requirements. Such agents and contractors shall be given an opportunity to ask questions and receive responses about the training materials.

**E. Records of Training.** The Compliance Officer or their delegate shall ensure that records are maintained, including copies of training materials, the types of training program provided, dates scheduled, and the individuals in attendance at each training session (as evidenced by signed attendance sheets), for a period of ten (10) years from the date of training. Records of all trainings attended will be kept in the employee’s individual Personnel File. The Compliance Officer shall provide the Compliance Committee access to records pertaining to continuing education and training programs. Records shall also include documentation of additional or corrective education and training given to Organization Personnel who, based on competency reviews, audits or other available information, did not demonstrate knowledge sufficient to substantially adhere to applicable laws and regulations and the Organization’s policies.

**F. Periodic Review of Training.** The Compliance Officer and Compliance Committee shall periodically monitor, evaluate and assess the effectiveness of the Organization’s training and education programs and shall revise such programs as necessary to reflect internal and external audits, investigations or other compliance findings.

**G. Distribution of Compliance Information.** In addition to periodic training and in-service programs, the Compliance Officer will distribute any relevant new compliance information to affected Personnel. Such information may include fraud alerts, advisory opinions, newsletters, notices, posters, FAQs, bulletins and email alerts.

**H. Distribution and Certification of Compliance Manual.** This Compliance Manual will be made accessible to Personnel in whatever format is deemed appropriate, including posting on the Organization’s website. Personnel will be required to examine the Compliance Manual and certify their examination within sixty (60) days of receipt of access to the Manual. New Personnel must certify their receipt of and examination of the documents in the Manual within thirty (30) days after the commencement date of their employment. Subsequent to the initial

certification, each officer, employee or member of the Board of Directors shall annually repeat the procedure of examining the documents in the Manual and certifying that they have examined its contents. The certifications will be distributed by, and returned to, the Compliance Officer or their delegate. In addition, all Personnel will be required to acknowledge, in writing, that adherence to Organization's Compliance Program, and policies and procedures, is a condition of employment, contracting, or Board membership. Those required to receive training must be afforded an opportunity to ask questions and receive responses to any questions they have in order for training to be complete.

**I. Compliance Training Plan.** The Compliance Officer, with the assistance of the Director of Human Resources, shall be responsible for implementing the Organization's compliance training and for developing and maintaining a compliance training plan. The training plan will, at a minimum, outline the following:

- The subjects or topics for training and education;
- The timing and frequency of the training;
- Which Personnel are required to attend;
- How attendance is tracked; and
- How the effectiveness of the training will be periodically evaluated (*e.g.*, pre- and post-tests, surveys, etc.).

The training plan shall be periodically updated by the Compliance Officer, with the assistance of the Director of Human Resources, to indicate the outcome of the various trainings provided by GCASA throughout the year. These periodic updates will include the following information, as applicable:

- A list of the Personnel that received, or did not receive, the Compliance Program training during the year covering the training plan including the name and role of the individual (*e.g.*, employee, Chief Executive Officer, senior administrator, manager, contractor, Board member, corporate officer, etc.);
- The type of compliance training(s) received (*e.g.*, annual, orientation, both);
- The format in which the training was provided;
- The date(s) of completion; and
- The date of hire for those who received initial Compliance Program training.

## **VI. REPORTING COMPLIANCE ISSUES.**

**A. Required Reporting.** The Organization has established a compliance reporting system that includes an anonymous and confidential Report Line number and Suggestion Box. Suggestions boxes are located at every Organization site, prominently wall mounted in common

areas, to allow staff, clients, and others to submit suggestions, concerns, and/or complaints related to compliance issues anonymously. Submissions are monitored and controlled exclusively by appropriate compliance personnel and collected and returned to the Compliance Officer. Results are reported to the site, via email, to maintain the anonymity of the submitter. Any action taken as a result of these suggestions is reported back to the Compliance Committee.

If any Personnel believe in good faith that fraud, waste, abuse or other improper conduct has occurred in violation of laws, regulations, guidelines or the Compliance Program, the individual is required to report such information internally to the Compliance Officer, or as set forth below. The Compliance Program encourages individual responsibility for reporting any activity by any Personnel or others that reasonably appears to violate laws, regulations or Compliance Program requirements. Individuals who report such conduct in good faith shall not be subjected to retaliation or intimidated for making such a report. The Organization shall maintain the confidentiality of reports, whether or not confidentiality is requested, unless the matter is subject to a disciplinary proceeding, referred to or under investigation by MFCU, OMIG, or law enforcement, or the disclosure is required during a legal proceeding. Individuals may report a concern to:

- An administrator, director or supervisor; or
- The Compliance Officer, Elizabeth Riter, and who can be reached at 585-815-1842 or by email at [lr iter@gcasa.org](mailto:lr iter@gcasa.org) or [compliance@gcasa.org](mailto:compliance@gcasa.org); or
- The Compliance Committee, to any member orally or in writing; or
- The Board of Directors; to any member of the Board orally or in writing; or
- The Confidential Compliance Report Line, Callers may make anonymous and confidential reports to the Report Line at 877-343-2070; or
- In Writing, anonymously via written letter sent directly to the Compliance Suggestion Box located in common areas at every Organization site or to the Compliance Officer or anonymously via written letter by mail to Attn: Compliance Officer, Genesee Council on Alcoholism and Substance Abuse, Inc., 430 East Main Street, Batavia, New York 14020; or
- U.S. OIG or NYS OMIG Compliance Hotlines. Personnel may also contact the U.S. Office of Inspector General hotline at 1-800-447-8477 or the New York State Office of the Medicaid Inspector General hotline at 1-877-873-7283 if they wish.

While the Organization requires Personnel to report fraud, waste, abuse or other improper conduct directly to GCASA, certain laws provide that individuals may also bring their concerns directly to the government (as further set forth below).

**B. Confidentiality.** Any individual, including Medicaid Program beneficiaries who receive services from GCASA, who reports a compliance concern in good faith will have the right to do so anonymously and/or confidentially. The information provided by the individual will be treated as confidential and privileged, whether or not confidentiality is requested, unless the matter is subject to a disciplinary proceeding, referred to or under investigation by MFCU, OMIG, or law

enforcement, or the disclosure is required during a legal proceeding. However, individuals who report compliance concerns are encouraged to identify themselves when making such reports so that an investigation can be conducted with a full factual background and without any delay.

**C. Non-Retaliation and Non-Intimidation.** Any individual, including Medicaid Program beneficiaries who receive services from GCASA, who reports a compliance concern in good faith will be protected against retaliation and intimidation. In such an instance, retaliation is itself a violation of the Code of Conduct and is unlawful. Retaliation and/or intimidation will not be tolerated. However, if the individual who reports a compliance issue has participated in a violation of law, the Code of Conduct or an Organization policy, the Organization retains the right to take appropriate disciplinary or other action, including termination of employment or service on the Board of Directors, or in the case of a contractor, termination of the applicable contract.

**D. Role of Outside Counsel.** Outside legal counsel shall assist the Board, Committees of the Board, the Management Team, the Chief Executive Officer, the Compliance Officer, and the Compliance Committee as needed, to identify and interpret federal and state laws and regulations applicable to the Compliance Program, assist in the periodic revision and maintenance of the Program, and with respect to any aspect of the Compliance Program.

Counsel may be notified at the discretion of the Compliance Officer or the Chief Executive Officer of incidents that have a reasonable chance of revealing non-compliance, at which time the Compliance Officer will be responsible for facilitating an investigation of the facts of the reported incident, at the direction of legal counsel. The results of the investigation will be used by legal counsel to provide legal advice to the Compliance Officer, the Chief Executive Officer, and the Compliance Committee. At the recommendation of the Compliance Officer, and subject to the Compliance Officer's authority to independently act on matters related to the Compliance Program, including the pursuit of required corrective action, the Compliance Committee will develop an organizational response and procedure for responding to incidents of potential non-compliance detected through its reporting system.

## **VII. DISCIPLINARY POLICIES TO ENCOURAGE GOOD FAITH PARTICIPATION.**

The Organization shall have disciplinary policies that encourage good faith participation in the Compliance Program, which shall be applicable to all categories of affected Personnel. All Personnel are expected to report compliance issues as outlined in the Compliance Program and GCASA's *Duty to Report Policy*, and are expected to assist in the resolution of compliance issues as applicable, including assisting in investigations of compliance issues by all Personnel.

The Organization is committed to providing staff with the tools and education they need to be successful in their job and expects all staff to conduct themselves in an ethical and law-abiding manner. The Organization has established rules and procedures that are reasonably capable of reducing criminal conduct and must be followed by all employees and agents of the organization. These rules and procedures are embedded within the Compliance Program Manual. Any employee who has questions or needs further clarification is expected to contact their supervisor or the Compliance Officer Elizabeth Riter at 585-815-1842 or by email at [lr iter@gcasa.org](mailto:lr iter@gcasa.org).

If after appropriate investigation, the Compliance Officer determines that there has been an occurrence(s) of fraud, waste, abuse, improper conduct or violation(s) of the Compliance Program, or Organization's policies and procedures, and any applicable laws or regulations, the

Compliance Officer, in conjunction with the Chief Executive Officer or their designee, shall impose sanctions against those individuals involved. Sanctions shall be imposed against any Personnel for: (1) failing to report suspected compliance problems; (2) participating in non-compliant activity; and (3) encouraging, directing, facilitating or permitting non-compliant behavior.

Sanctions will also be imposed against administrators, directors and supervisors for failure to adequately instruct their staff on the importance of the detection of noncompliance with applicable polices and legal requirements, where reasonable due diligence would have led to the earlier discovery of a violation and opportunity to correct the problem. Sanctions shall be imposed, subject to the due process requirements of any applicable employment contracts, organizational Bylaws, or contracts or agreements. Sanctions shall be fairly and consistently applied and firmly enforced in accordance with any written standards of disciplinary action as follows:

- Employee sanctions according to Organization's Progressive Discipline includes:
  - a verbal warning;
  - a written warning;
  - suspension; and
  - termination of employment.
- Board Member sanctions can range from written admonition to, in the most extreme cases, removal from the Board of Directors, in accordance with applicable Bylaws, policies, laws and/or regulations.
- Contractor sanctions shall range from written admonition, financial penalties, and in the most extreme cases, termination of the contractor's relationship with Organization.

## **VIII. MONITORING AND AUDITING.**

**A. System for Identifying Risks.** The Compliance Officer and the Compliance Committee has developed a system for routine identification and evaluation of compliance risk areas, and the Compliance Officer will, in conjunction with the Compliance Committee, ensure that GCASA conducts internal compliance auditing and monitoring and, as appropriate, external audits, to evaluate the Organization's compliance with Medicaid Program requirements and the overall effectiveness of its Compliance Program. Such a monitoring and auditing system shall include the performance of regular, periodic compliance audits by internal or external auditors and department heads or other designated employees. Such audits will include reviews of Organization's business and billing practices, including pre-billing audits, and measures to identify, anticipate, and respond to quality of care risk areas. Risk identification shall focus on specific issues associated with the delivery and payment of services for the Organization under the Compliance Program, including providing services within the scope of the Organization's certificate, license, or recognized scope of practice; reviewing OMIG, OIG or CMS audit guidance for provider types to identify risk areas; and reviewing New York State Medicaid provider manuals and program requirements to establish parameters of operation by provider type. In addition, such

system shall include a periodic review of the Compliance Program and include onsite visits, Personnel interviews, questionnaires (submitted to employees and contractors) and client record documentation reviews to determine whether the elements of the Compliance Program have been satisfied. More specifically these audits shall include but are not limited to:

- Chart audits prior to the resolution of any billed date of service
- Weekly report of unresolved visits
- Monthly retrospective billing audits
- Establishment of annual Quality Indicators
- Utilization Review of a pre-determined sample of clinical records<sup>4</sup>
- Monthly review of fiscal, clinical, productivity, and other data by Management
- Periodic employee satisfaction surveys, performed by internal and external survey teams
- Exit interviews conducted with all employees voluntarily leaving the Organization
- Background and license check on all employees at the time of hire and regularly thereafter
- Regular monitoring of the federal and state exclusion lists
- Customer Satisfaction Surveys: Clients are asked to provide feedback about the services they receive and the program they attend. Using a program-specific, questionnaire and completed forms shall be returned to the Compliance Officer. Results will be reported to the Board, Management Team and the Program Directors.
- Stakeholder Surveys: Referral sources, and other stakeholders will be surveyed periodically. Using a standardized survey tool, areas of access, customer service, reimbursement, and clinical services will be assessed. The results will be returned to the Compliance Officer and reported to the Board and Management Team.
- Retrospective billing audits: Senior staff from the Accounts Receivable Department will conduct periodic billing audits in all programs that bill for services. Using a sample of paid claims, staff will audit for documentation and coding accuracy.

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<sup>4</sup> The Organization has developed a peer review team composed of Program Directors and senior clinicians, who conduct ongoing reviews of a sample of case records at each program that provides billable services. Cases are selected randomly, with attention given to length of stay, diagnoses, and past performance of the clinician in an audit. Charts are reviewed for compliance with all applicable rules and regulations, accuracy in documentation, and clinical excellence. All results are reported to the Director of Corporate Compliance. In cases where there are questions of medical necessity and/or medical efficacy, the case will be reviewed by the Utilization Review Level III Committee. The results of these case reviews are communicated, in writing, to the Director of Services, Program Director, and the responsible clinician.

Findings of these audits will be reported to Management, the respective Program Director, and the site's Senior Secretary.

- Consumer Advisory Committee (CAC): This committee is chaired by the Chief Executive Officer or other member of the Management Team and includes consumer representatives from each of Organization's programs. Representatives are nominated to represent a program by the respective Program Director and serve a term of one year. The Committee solicits feedback from consumers of the various programs and brings the information back to the committee. Feedback may consist of complaints, concerns or suggestions for program improvement. Representatives from the Board of Directors will be invited to attend CAC meetings in order to listen to consumer concerns and issues, thus allowing the Board of Directors to be informed.

The Compliance Officer shall establish and implement standard operating procedures for conducting internal reviews in compliance with regulations governing the Organization's programs. These procedures shall establish specific schedules for the frequency of each type of review activity and the percentage of records and/or claims reviewed for each audit. Sampling shall be conducted in a manner consistent with generally accepted statistical standards. The results of such reviews shall be documented on a standardized form and retained for a minimum of ten (10) years. Any compliance operation that identifies a significant risk identified that rises to the level of an investigation shall be brought to the attention of the Board of Directors.

In addition, the Organization shall have an annual financial audit conducted by Certified Public Accountants to examine on a test basis, evidence supporting the proper handling and reporting of amounts, and disclosures relating to the financial activity of Organization. The Organization shall also conduct annual reviews of business and contractual agreements and relationships, as well as billing practices, to ensure that all activities follow its Code of Conduct, standards, and procedures. The Organization shall maintain a disclosure listing of all individuals associated with Organization who have identified outside party interests that represent potential conflicts of interest and only independent Directors shall be members of the Organization's Audit Committee.

**B. Oversight of Auditing Process.** The Compliance Officer will be responsible for overseeing GCASA's auditing and monitoring system. The Compliance Officer is authorized to delegate auditing duties to other Personnel of GCASA, as well as outside attorneys, accountants, and vendors as necessary and appropriate. The Compliance Officer is responsible for coordinating the implementation of the auditing and monitoring processes.

**C. Auditing Procedures.** The Compliance Officer, in conjunction with their designee(s) and any appropriate supervisors, will determine the audit tools and procedures for carrying out the audits. Audits will be performed by internal or external auditors who have expertise in State and Federal Medicaid Program requirements and applicable laws, rules, and regulations, or who have expertise in the subject area of the audit. The Compliance Officer may contract with outside companies to perform certain auditing functions. The Compliance Officer will oversee the services provided by any outside vendors. All Personnel are required to participate in, and cooperate with, internal and external audits, as requested by the Compliance Officer. This includes assisting in the production of documents, explaining program operations or rules to auditors, and implementing any corrective action plans.



**D. Written Reports.** Upon completion of an audit, the Compliance Officer will arrange for the preparation of a written audit report. The report will set forth the subject of the audit, audit methodology, audit findings, and any recommended corrective action. The report or a summary thereof will be provided to the Compliance Committee, Chief Executive Officer, Board, and any appropriate supervisors.

**E. Corrective Action Plans.** The Compliance Officer and the Compliance Committee shall review the results of such reviews, develop a corrective action plan to remedy any deficiencies identified in the results, with the assistance of counsel if necessary, and provide the corrective action plan to those individuals who will be charged with the responsibility of implementing it. If periodic review and monitoring activities identify substantial deviation from acceptable norms, the Compliance Officer, Compliance Committee, and Board of Directors shall take prompt steps to address such deviations. Where additional investigation of such deviations is appropriate, the Compliance Officer, in consultation with the Compliance Committee, shall retain the services of such independent advisors as shall be necessary to address such deviations. Any Medicaid Program or payments from any other health care payor will be reported, returned, and explained and GCASA will ensure prompt corrective action is taken to prevent recurrence.

**F. Documentation of Organization Consultations.** All Personnel who, with advice from legal counsel as appropriate, in their efforts to comply with a particular law or regulation, request advice from an employee of a federal, state, or local government agency, or a fiscal intermediary, carrier, or third-party payor, such person shall document the consultation in writing. Documentation should include the name and title of the party consulted, the date and time of the consultation, the subject matter of the consultation, the questions asked, and the advice received. Copies of consultations should be provided to the Compliance Officer for retention. Written documentation of Organization guidance is critical to demonstrating the good faith reliance and due diligence efforts of Organization and its Personnel.

**G. Government Inquiries.** If contacted by a government official, all Personnel are required to obtain the official's identification and immediately inform their supervisor, director and the Compliance Officer of the contact. Personnel are strongly encouraged that before they speak to such officials, they first contact the Chief Executive Officer, their supervisor, director and/or the Compliance Officer. The Chief Executive Officer, their supervisor, director and/or the Compliance Officer will attempt to obtain additional information from the government official that will assist the Organization in deciding how to respond to the official's request.

In no event, however, may any Personnel respond to a request to disclose Organization's documents or records of any kind without first speaking with the Chief Executive Officer, their supervisor, director and/or the Compliance Officer, and receiving their/their approval to release documents. If appropriate, the Chief Executive Officer, supervisor, director and/or Compliance Officer shall seek advice from legal counsel prior to the release of any documents to government officials. If it is appropriate to give a response to a request for information, the response given must be accurate and complete.

## **IX. RESPONDING TO COMPLIANCE PROBLEMS.**

**A. Compliance Investigations.** Personnel are required to fully cooperate in all: (i) internal audits and investigations; and (ii) government audits and investigations. Any employee who fails to provide such cooperation will be subject to termination of employment. Any

contractor who fails to provide such cooperation will be subject to termination of contract or the relationship, as appropriate. Any Board member who fails to provide such cooperation will be subject to removal from the Board of Directors, as appropriate. All subpoenas, search warrants, and requests for GCASA documents in the course of an audit or investigation by a governmental agency or insurance company should be forwarded to the Compliance Officer, who is responsible for reviewing and responding to such requests.

In any case in which there is a report or reasonable indication of a violation of applicable law, rule, or regulation, GCASA's Corporate Compliance Plan, Code of Conduct or its Policies and Procedures, fraud, waste, or abuse, or other wrongful or unethical conduct that falls within the purview of the Corporate Compliance Program, the Compliance Officer shall have the primary responsibility for conducting or overseeing the investigation of the alleged situation or circumstance. The Compliance Officer, or their qualified designee(s), shall promptly investigate the actions that may need to be taken to correct such problems promptly and thoroughly to reduce the potential for recurrence, and to ensure ongoing compliance with state and federal laws, rules, and regulations, and Medicaid Program requirements. The Compliance Officer may utilize, without limitation, other GCASA associates (consistent with appropriate confidentiality), outside attorneys, accountants and auditors or other consultants or experts for assistance or advice. The purpose of the investigation shall be to determine whether or not there is reasonable cause to believe an individual(s) or entity may have knowingly or inadvertently participated in violations of applicable law(s) or regulation(s); to facilitate corrective action if appropriate; and to implement procedures necessary to ensure future compliance. Should the Compliance Officer believe that the preliminary facts learned suggest a possible violation of the Anti-Kickback Statute or other criminal statute, the matter should be brought to the immediate attention of the Chief Executive Officer and the Board for potential referral to outside counsel.

## **X. POLICY OF NON-INTIMIDATION AND NON-RETALIATION.**

The Organization, pursuant to its Whistleblower Policy, has a policy of non-intimidation and non-retaliation for good faith participation in the Compliance Program and reporting of any actual or potential violation of this Plan, the Code of Conduct, the Organization's policies and procedures, and/or any federal or state statute, rule, regulation, policy, or standard. Any individual who reports a compliance concern in good faith will be protected against retaliation and intimidation in accordance with sections 740 and 741 of the New York State Labor Law. However, if the individual who reports a compliance issue has participated in a violation of law, the Code of Conduct, or an Organization policy, the Organization retains the right to take appropriate disciplinary or other action, including termination of employment, service on the Board of Directors, or in the case of a contractor, termination of the applicable contract.

## **XI. COMPLIANCE CONTACTS AND NUMBERS.**

Any Personnel may contact the Chief Executive Officer, their administrator, director, supervisor, the Compliance Officer, a Compliance Committee member, the Compliance Report Line or Suggestion Box with any compliance question or concern. The contact information is as follows:

- The Compliance Officer, Elizabeth Riter can be reached at 585-815-1842 or by email at [lriter@gcasa.org](mailto:lriter@gcasa.org) or [compliance@gcasa.org](mailto:compliance@gcasa.org); or

- The Compliance Committee, to any member orally or in writing; or
- The Board of Directors, to any member of the Board orally or in writing; or
- The Confidential Compliance Report Line, callers may make confidential and anonymous reports to the Report Line at 877-343-2070; or
- In Writing, anonymously via written letter sent directly to the Suggestion Box located in common areas at every Organization site or to the Compliance Officer anonymously via written letter by mail to Attn: Compliance Officer, Genesee Council on Alcoholism and Substance Abuse, Inc., 430 East Main Street, Batavia, New York 14020; or
- U.S. OIG or NYS OMIG Compliance Hotlines, Personnel and contractors may also contact the U.S. Office of Inspector General hotline at 1-800-447-8477 or the New York State Office of the Medicaid Inspector General hotline at 1-877-873-7283 if they wish.

## **XII. LAWS REGARDING THE PREVENTION OF FRAUD, WASTE AND ABUSE.**

### **A. Federal Laws.**

#### **1. False Claims Act (31 USC §§ 3729 – 3733; 18 USC § 287).**

Under the Federal Civil False Claims Act, any person who knowingly and/or willfully submits a false or fraudulent claim for payment to the Federal government may be subject to civil penalties, including monetary penalties, treble damages, exclusion from participation in the Medicare and Medicaid Programs, and fines of up to three times the government’s loss plus up to \$11,000 per claim filed (*i.e.*, each instance of an item or service billed to a government health care program). Examples of prohibited conduct include billing for services not rendered, upcoding claims, double billing, misrepresenting services that were rendered, falsely certifying that services were medically necessary, making false statements to the government, failing to comply with conditions of payment, and failing to refund overpayments made by a Federal health care program. Notably, no specific intent to defraud the government is required, as “knowing” is defined to include not only actual knowledge but also instances in which the person acted in deliberate ignorance or reckless disregard of the truth or falsity of the information. The civil False Claims Act also contains a whistleblower provision that permits private citizens (“relators”) to file suits on behalf of the government (“qui tam suits”) against those who have defrauded the government and the relator, if successful, may receive a portion of the government’s recovery.

Federal law also establishes criminal liability against individuals or entities that knowingly submit, or cause to be submitted, a false or fraudulent claim for payment to the Federal government. Criminal False Claims Act liability can result in imprisonment of up to five years and/or substantial fines.

#### **2. Administrative Remedies for False Claims (31 USC §§ 3801 – 3812).**

Federal law allows for administrative recoveries by Federal agencies related to false claims. The laws penalize any person who makes, presents, or submits (or causes to be made, presented, or submitted) a claim that the person knows or has reason to know:

- Is false, fictitious, or fraudulent;
- Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;
- Includes or is supported by any written statement that omits a material fact, is false, fictitious, or fraudulent as a result of such omission, and is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact; or
- Is for payment for the provision of property or services which the person has not provided as claimed.

The Federal agency receiving the false claim may impose a penalty of up to \$5,000 for each claim, as well as an assessment of up to twice the amount of the claim in violation of the False Claims Act. In these instances, the determination of whether a claim is false and the imposition of fines and penalties is made by the Federal administrative agency, rather than by a court. Moreover, in contrast to the False Claims Act, a violation of these laws occurs when a false claim is submitted, rather than when it is paid.

### **3. Anti-Kickback Statute (42 USC § 1320a-7b(b)).**

The Federal Anti-Kickback Statute is a criminal law that prohibits the knowing and willful payment of “remuneration” to induce or reward patient referrals or the generation of business involving any item or service that is payable by a Federal health care program. Remuneration includes kickbacks, bribes, and rebates paid directly or indirectly, overtly or covertly, in cash or in kind (*i.e.*, anything of value), and items or services includes drugs, supplies, or health care services provided to Medicare or Medicaid patients. The Statute covers both the payers and recipients of kickbacks. No intent to violate the Statute is required, and the Statute has been interpreted to cover any arrangement where one purpose of the remuneration was to obtain money for the referral of services or to induce further referrals.

An individual or entity that is found to have violated the Anti-Kickback Statute may be subject to criminal penalties and administrative sanctions including fines, imprisonment, and exclusion from participation in Federal health care programs, including the Medicaid and Medicare Programs. Safe harbors protect certain payment and business practices from criminal and civil prosecution that could otherwise implicate the Anti-Kickback Statute. To be protected by a safe harbor, the arrangement must fit squarely within the safe harbor and must satisfy all of its requirements.

### **4. Physician Self-Referral Law (42 USC § 1395nn).**

The Federal Physician Self-Referral Law, commonly referred to as the “Stark Law,” prohibits physicians—including medical doctors, doctors of osteopathy, psychologists, oral surgeons, dentists, podiatrists, optometrists, and chiropractors—from referring patients to receive “designated health services” payable by Medicare or Medicaid from entities with which the physician or an immediate family member has a financial relationship, unless the ownership or compensation arrangement is structured to fit within a regulatory exception.

Financial relationships include both ownership/investment interests and compensation arrangements, and “designated health services” are any of the following services, other than those provided as emergency physician services furnished outside of the United States, that are payable in whole or in part by the Medicare Program:

- Clinical laboratory services;
- Physical therapy, occupational therapy, and outpatient speech-language pathology services;
- Radiology and certain other imaging services;
- Radiation therapy services and supplies;
- Durable medical equipment and supplies;
- Parenteral and enteral nutrients, equipment, and supplies;
- Prosthetics, orthotics, and prosthetic devices and supplies;
- Home health services;
- Outpatient prescription drugs; and
- Inpatient and outpatient hospital services.

The Stark Law is a strict liability statute, and therefore, proof of specific intent to violate the law is not required. The Law also prohibits the submission, or causing the submission, of claims in violation of the law's restrictions on referrals. Penalties for physicians who violate the Stark Law include fines, civil penalties, repayment of Medicare and/or Medicaid reimbursement, and exclusion from participation in the Federal health care programs.

#### **5. Exclusion Statute (42 USC § 1320a-7).**

The Federal Exclusion Statute requires HHS-OIG to exclude individuals and entities convicted of certain types of criminal offenses from participation in all Federal health care programs (including the Medicare and Medicaid Programs), and gives HHS-OIG the discretion to exclude individuals and entities on several other grounds. The following types of criminal offenses require exclusion:

- Medicare or Medicaid fraud, as well as any other offenses related to the delivery of items or services under Medicare or Medicaid;
- Patient abuse or neglect;
- Felony convictions for other health-care-related fraud, theft, or other financial misconduct; and
- Felony convictions for unlawful manufacture, distribution, prescription, or dispensing of controlled substances.

Physicians who are excluded from participation in Federal health care programs are barred from receiving payment from programs such as Medicaid and Medicare for items or services furnished, ordered, or prescribed. Additionally, individuals and entities providing health care services may not employ or contract with excluded individuals or entities in any capacity or setting in which Federal health care programs may reimburse for the items or services furnished by those employees or contractors. Employing or contracting with an excluded individual or entity may result in civil monetary penalties and an obligation to repay any amounts paid by a Federal health care program attributable to the excluded individual or entity's services.

## **6. Civil Monetary Penalties Law (42 USC § 1320a-7a).**

The Federal Civil Monetary Penalties Law authorizes HHS-OIG to seek civil monetary and other penalties against individuals and entities for a wide variety of conduct, including presenting a claim that a person knows or should know is for an item or service that was not provided as claimed or is false or fraudulent, presenting a claim that the person knows or should know is for an item or service that is not payable, or making false statements or misrepresentations on applications or contracts to participate in Federal health care programs, among others. Violations of the False Claims Act, Anti-Kickback Statute, and Stark Law implicate the Civil Monetary Penalties Law and can lead to civil monetary and other penalties.

The amount of the penalties and assessments that HHS-OIG is authorized to seek under the Civil Monetary Penalties Law differs depending on the type of violation at issue. Specifically, the Civil Monetary Penalties Law authorizes penalties in the amount of \$100,000 for each act in violation of the Anti-Kickback Statute, in addition to any other penalty that may be prescribed by law. Regulations also permit HHS-OIG to impose a penalty up to \$50,000 for each offer, payment, solicitation or receipt of remuneration, and violations of the Anti-Kickback Statute can result in assessments of up to three times the total amount of the remuneration offered, paid, solicited, or received. Remuneration under the Civil Monetary Penalties Law includes waivers of coinsurance and deductible amounts (including partial waivers), and transfers of items or services for free or for amounts other than fair market value. In addition to civil monetary penalties, persons or entities may also be excluded from participation in Federal health care programs, fines, treble damages, denial of payment, and repayment of amounts improperly paid.

### **B. State Laws.**

#### **1. New York State False Claims Act (N.Y. State Finance Law §§ 187 – 194).**

The New York State False Claims Act closely tracks the Federal False Claims Act, and 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 the Medicaid Program. Specifically, the Act penalizes any person or entity who, among other conduct:

- Knowingly presents, or causes to be presented, to any employee, officer, or agent of the State or a local government a false or fraudulent claim for payment or approval, or conspires to do the same;

- Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim, or conspires to do the same;
- Conspires to defraud the State or a local government by getting a false or fraudulent claim allowed or paid; or
- 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 State or a local government.

The penalty for filing a false claim is \$6,000 to \$12,000 per claim and the recoverable damages are between two and three times the value of the amount falsely received. In addition, the person or entity that filed the false claim may have to pay the government’s legal fees, including the costs of a civil action brought to recover any penalties or damages and attorneys’ fees. The New York State False Claims Act also allows private individuals (“relators”) to bring an action on behalf of the State or local government (“qui tam suits”). If the lawsuit results in a recovery or settlement, the relator may share in a percentage of the proceeds.

## **2. New York Social Services Law § 145.**

Under Section 145 of the New York Social Services Law, any person who makes false statements or representations, deliberately conceals any material fact, impersonates another, or through another fraudulent device obtains, or attempts to obtain, or aids or abets any person to obtain, public assistance or care to which the person is not entitled, including Medicaid Program benefits, is guilty of a misdemeanor. However, if the act constitutes a violation of a provision of the New York Penal Law, the person will be punished in accordance with the penalties fixed by the applicable law.

## **3. New York Social Service Law § 145-b.**

Section 145-b of the New York Social Services Law makes it unlawful to knowingly make a false statement or representation, to deliberately conceal any material fact, or to engage in any other fraudulent scheme or device to obtain or attempt to obtain public funds, including Medicaid Program funds. In instances where a violation of this law occurs, the local Social Services District or the State may recover civil damages equal to three times the amount by which any figure is falsely overstated. In the case of non-monetary false statements, the local Social Services District or State may recover three times the damages sustained by the government due to the violation or \$5,000, whichever is greater. The Department of Health may also impose a civil penalty of up to \$2,000 per violation, and if repeat violations occur within five years, a penalty of up to \$7,500 per violation may be imposed if the conduct involves more serious violations of Medicaid rules, billing for services not rendered, or providing excessive services.

## **4. New York Social Services Law § 145-c.**

Under Section 145-c of the New York Social Services Law, any person who applies for or receives public assistance, including Medicaid, by intentionally making a false or misleading statement, or intending to do so, the needs of the person or their family are not taken into account for various periods of time based on the offense committed. Specifically, the person’s or their family’s needs will not be taken into account for six months on the first offense, 12 months on the

second offense or a single offense that resulting in the wrongful receipt of benefits in an amount of between \$1,000 and \$3,900, 18 months on the third offense or upon an offense that results in the wrongful receipt of benefits in an amount in excess of \$3,900, and five years for any subsequent occasion of any such offense. These sanctions are in addition to any sanctions which may be provided for by law with respect to the offenses involved.

#### **5. New York Social Services Law § 366-b.**

Under Section 366-b of the Social Services Law, any person who obtains or attempts to obtain, for themselves 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. Additionally, 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. Finally, if an act also constitutes a violation of a provision under the New York Penal Law, the person committing the act will be punished in accordance with the penalties fixed by such law.

#### **6. New York Penal Law Article 155.**

Article 155 of the New York Penal Law establishes the crime of Larceny, which occurs when a person, with intent to deprive another of their property, obtains, takes, or withholds the property by means of trick, embezzlement, false pretense, false promise, a scheme to defraud, or other similar behavior. The four crimes of Larceny have been applied to Medicaid fraud cases. These crimes include:

- Penal Law § 155.30, Grand Larceny in the Fourth Degree, which involves property valued over \$1,000, and is a Class E felony;
- Penal Law § 155.35, Grand Larceny in the Third Degree, which involves property valued over \$3,000, and is a Class D felony;
- Penal Law § 155.40, Grand Larceny in the Second Degree, which involves property valued over \$50,000, and is a Class C felony; and
- Penal Law § 155.42, Grand Larceny in the First Degree, which involves property valued over \$1 million, and is a Class B felony.

#### **7. New York Penal Law Article 175.**

The four crimes in Article 175 of the New York Penal Law, Offenses Involving False Written Statements, relate to filing false information or claims and have been applied in Medicaid fraud prosecutions. These crimes include:

- Penal Law § 175.05, Falsifying Business Records, which involves entering false information, omitting material information, or altering an enterprise's business records with the intent to defraud, and is a Class A misdemeanor;



- Penal Law § 175.10, Falsifying Business Records in the First Degree, which includes the elements of Penal Law § 175.05 and the intent to commit another crime or conceal its commission, and is a Class E felony;
- Penal Law § 175.30, Offering a False Instrument for Filings in the Second Degree, involves presenting a written instrument (including a claim for payment) to a public office knowing that it contains false information, and is a Class A misdemeanor; and
- Penal Law § 175.35, Offering a False Instrument for Filing in the First Degree, which includes the elements of Penal Law § 175.30 and an intent to defraud the State or a political subdivision, and is a Class E Felony.

#### **8. New York Penal Law Article 176.**

Article 176 of the New York Penal Law, Insurance Fraud, applies to claims for insurance payment, including Medicaid or other health insurance, and contains six crimes. The crimes include:

- Penal Law § 176.10, Insurance Fraud in the Fifth Degree, which involves intentionally filing a health insurance claim knowing that it is false, and is a Class A misdemeanor;
- Penal Law § 176.15, Insurance fraud in the Fourth Degree, which involves filing a false insurance claim for over \$1,000, and is a Class E felony;
- Penal Law § 176.20, Insurance Fraud in the Third Degree, which involves filing a false insurance claim for over \$3,000, and is a Class D felony;
- Penal Law § 176.25, Insurance Fraud in the Second Degree, which involves filing a false insurance claim for over \$50,000, and is a Class C felony; and
- Penal Law § 176.30, Insurance Fraud in the First Degree, which involves filing a false insurance claim for over \$1 million, and is a Class B felony;
- Penal Law § 176.35, Aggravated Insurance Fraud, which involves committing insurance fraud more than once, and is a Class D felony.

#### **9. New York Penal Law Article 177.**

Article 177 of the New York Penal Law establishes the crime of Health Care Fraud, and applies to claims for health insurance payment, including claims submitted to the Medicaid Program and other health plans, including non-government plans, and contains five crimes. The crimes include:

- Penal Law § 177.05, Health Care Fraud in the Fifth Degree, involves knowingly filing, with intent to defraud, a claim for payment that intentionally has false information or omissions, and is a Class A misdemeanor;

- Penal Law § 177.10, Health Care Fraud in the Fourth Degree, involves filing false claims and annually receiving over \$3,000 in the aggregate, and is a Class E felony;
- Penal Law § 177.15, Health Care Fraud in the Third Degree, involves filing false claims and annually receiving over \$10,000 in the aggregate, and is a Class D felony;
- Penal Law § 177.20, Health Care Fraud in the Second Degree, involves filing false claims and annually receiving over \$50,000 in the aggregate, and is a Class C felony; and
- Penal Law § 177.25, Health Care Fraud in the First Degree, involves filing false claims and annually receiving over \$1 million in the aggregate, and is a Class B felony.

### **C. Whistleblower Protection.**

#### **1. Federal False Claims Act (31 USC §§ 3730(h)).**

The civil False Claims Act provides protection to 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 False Claims Act. Remedies include reinstatement with comparable seniority as the 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. However, if the *qui tam* action has no merit or is for the purpose of harassing the person or entity, the individual may have to pay the person or entity for its legal fees and costs in defending the suit.

#### **2. New York State False Claims Act (N.Y. State Finance Law § 191).**

The New York State False Claims Act provides protection to an employee of any private or public employer who is discharged, demoted, suspended, threatened, harassed, or otherwise discriminated against in the terms and conditions of employment by their employer because of lawful acts taken by the employee in furtherance of an action under the New York State False Claims Act. Remedies can include reinstatement to the same position or an equivalent position, two times back pay, reinstatement of full fringe benefits and seniority rights, and compensation for any special damages sustained, including litigation costs and reasonable attorneys' fees.

#### **3. New York Labor Law § 740.**

An employer may not take any retaliatory action against an employee (including former employees) if the employee discloses, or threatens to disclose, information about the employer's policies, practices, or activities to a regulatory, law enforcement, or another similar agency or public official. Protected disclosures include disclosures of an activity, policy, or practice of the employer that the employee reasonably believes are in violation of law, rule, or regulation, or that the employee reasonably believes pose a substantial and specific danger to the public health or safety. The employee's disclosure is protected only if the employee first raised the matter with a supervisor and gave the employer a reasonable opportunity to correct the alleged violation.

However, employer notification is not required where:

- There is an imminent and serious danger to the public health or safety;
- The employee reasonably believes that reporting to the supervisor would result in destruction of evidence or other concealment of the activity, policy, or practice;
- The activity, policy or practice could reasonably be expected to lead to endangering the welfare of a minor;
- The employee reasonably believes that reporting to the supervisor would result in physical harm to the employee or any other person; or
- The employee reasonably believes that the supervisor is already aware of the activity, policy, or practice and will not correct it.

Employees are also protected from retaliatory action if the employee objects to, or refuses to participate in, any activity that is in violation of law, rule, or regulation or that the employee reasonably believes poses a substantial and specific danger to the public health or safety. Additionally, employees are protected when the employee provides information to, or testifies before, any public body conducting an investigation, hearing, or inquiry into an employer's activity, policy, or practice. If an employer takes retaliatory action against the employee, the employee may sue in State court for reinstatement to the same position held before the retaliatory action, or to an equivalent position, any back wages and benefits, and attorneys' fees, among other remedies. If the employer's violation was willful, malicious, or wanton, punitive damages may be imposed.

#### **4. New York State Labor Law § 741.**

A health care employer may not take any retaliatory action against a health care employee if the health care employee discloses, or threatens to disclose, certain information about the health care employer's policies, practices, or activities to a regulatory, law enforcement, or other similar agency or public official, to a news media outlet, or to a social media forum available to the public at large. Under the law, a "health care employee" is any person who performs health care services for, and under the control and direction of, any public or private employer that provides health care services for wages or other remuneration.

Protected disclosures include disclosures of an activity, policy, or practice of the health care employer that the health care employee, in good faith, reasonably believes constitute improper quality of patient care or improper quality of workplace safety. Health care employees are also protected from retaliatory action if the health care employee objects to, or refuses to participate in, any activity, policy, or practice of the health care employer that the health care employee, in good faith, reasonably believes constitutes improper quality of patient care or improper quality of workplace safety.

The health care employee's disclosure is protected only if the health care employee first raised the matter with a supervisor and gave the health care employer a reasonable opportunity to correct the activity, policy, or practice. However, employer notification is not required where the improper quality of patient care or workplace safety presents an imminent threat to public health

or safety, to the health of a specific patient, or to the health of a specific health care employee and the health care employee reasonably believes, in good faith, that reporting to a supervisor would not result in corrective action.

If a health care employer takes retaliatory action against the health care employee, the health care employee may sue in State court for reinstatement to the same position held before the retaliatory action, or to an equivalent position, any back wages and benefits, and attorneys' fees, among other remedies. If the health care employer's violation was willful, malicious, or wanton, punitive damages may be imposed.

*\*These are brief summaries of very complex laws. The Compliance Officer can provide more information about these laws, or their application to any situation Personnel may encounter. These laws all serve the important function of protecting Federal and State health care programs from fraud, waste, and abuse, and facilitate funds that would otherwise have been spent for non-program reasons to protect the beneficiaries of these programs. The Organization supports the goals of these laws and requires all employees, contractors and agents to comply with these laws as part of our mission of providing services to individuals.*

### **XIII. PROGRAM EVALUATION.**

The Compliance Officer will oversee an annual review of the Compliance Program. GCASA's Compliance Program will be reviewed at least annually to ensure that the Medicaid Program requirements, as well as the requirements set out in State and Federal laws, rules, and regulations, have been met. The purpose of this review will be to determine the effectiveness of GCASA's Compliance Program, as well as whether any revision or corrective action is required. Additionally, the annual Compliance Program review will determine whether:

- The Compliance Plan, Compliance Program, and Code of Conduct have been implemented;
- Personnel are following the policies, procedures, and Code of Conduct;
- The policies, procedures, and Code of Conduct are effective;
- Any updates are required;
- The Compliance Officer is allocated sufficient staff and resources to satisfactorily perform their responsibilities for the day-to-day operation of the Compliance Program; and
- The Compliance Officer was able to satisfactorily perform their responsibilities for the day-to-day operation of the Compliance Program, including whether the Compliance Officer's other duties hindered the Compliance Officer in carrying out their primary responsibilities, if applicable.

The annual Compliance Program review may be carried out by GCASA's Compliance Officer, Compliance Committee, external auditors, or other individuals who have the necessary knowledge and expertise to evaluate the effectiveness of the Compliance Program components that they are reviewing and are independent from the functions being reviewed. The annual review

will include:

- On-site visits;
- Interviews with employees, Board members, and contractors;
- Review of records;
- Surveys; and/or
- Any other comparable method GCASA deems appropriate, so long as the method does not compromise the independence or integrity of the review.

The design, implementation, and results of the annual review, as well as any corrective action implemented, will be documented. The results of the review will be shared with GCASA's Chief Executive Officer, senior management, Compliance Committee, and Board.

#### **XIV. RECORD RETENTION.**

GCASA shall ensure that all records demonstrating that the Organization has adopted, implemented, and operated an effective Compliance Program and has satisfied all applicable regulatory requirements are properly retained. Records shall be retained for a period of not less than six (6) years from the date the Compliance Program was implemented or amended, whichever is later. GCASA shall also make copies of these records available to DOH, OMIG, or MFCU upon request.

#### **XV. CONTRACTORS.**

Contractors—including contractors, agents, subcontractors, and independent contractors—who are affected by GCASA's Compliance Risk Areas must comply with the Organization's Compliance Program, policies and procedures, and Code of Conduct. GCASA shall ensure that contracts with contractors subject to its Compliance Program include the following provisions:

- All contracts with contractors subject to GCASA's Compliance Program shall specify that the contractor is subject to the Organization's Compliance Program, to the extent that the contractor is affected by GCASA's Compliance Risk Areas and only within the scope of the contracted authority and affected Compliance Risk Areas; and
- All contracts with contractors subject to GCASA's Compliance Program shall include termination provisions for failure to adhere to the Organization's Compliance Program requirements.

These contractual provisions notwithstanding, GCASA remains ultimately responsible for the adoption, implementation, maintenance, enforcement and effectiveness of its Compliance Program.

## **XVI. CONCLUSION.**

GCASA is proud of its reputation for consistently practicing the values of professionalism, service quality, personal service, and trust. As a values-driven organization, GCASA is committed to complying with all applicable laws and regulations.

Approved by GCASA Board of Director's, \_\_\_\_\_,

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