

Rising Treetops at Oakhurst

CORPORATE COMPLIANCE PROGRAM

Purpose

Rising Treetops at Oakhurst (RTO) is committed to providing services of the highest quality to its consumers and their families and while doing so, to be in full compliance with all federal, state and local laws and regulations. RTO recognizes that a critical aspect of its Standards of Conduct involves fostering a culture that promotes responsible, honest conduct, transparency in all business transactions and adherence to the laws and regulations of the government agencies that fund its work and promulgate standards of care. In order to achieve these important goals, RTO works to facilitate prevention of improper or illegal activities and to provide mechanisms to detect any violations. The agency takes prompt action to resolve instances of conduct that do not conform to federal, state, and private payer healthcare program requirements, general legal standards and RTO's internal ethical standards and business policies. RTO is also committed to protecting from retaliation, its employees and others who in good faith report problems and concerns. A threat or act of retaliation against an employee or other individual who has reported improper or illegal conduct can threaten the integrity of the agency's dedication to these standards by deterring the reporting of suspected misconduct and can limit RTO's ability to monitor and resolve issues of compliance.

This policy applies to all employees, volunteers and directors and officers of the Board of Directors, and related parties if relevant (independent contractors, vendors, consultants).

RTO's Corporate Compliance Program includes the following key elements:

1. Written Standards of Conduct, Policies and Procedures.

RTO's Training and Orientation Manual, as well as its Personnel Practices & Policies document, the organization's Standard of Conduct, Whistle Blower Protection and Conflict-of-Interest policies, and the organization's Internet/Social Media Policy provides guidance to employees regarding the ethical and legal compliance requirements of their jobs. In addition to the Standards of Conduct Policy the Training and Orientation Manual describes the internal direct care and camp-based day to day policies we have implemented to ensure that we uphold our responsibilities and act with accountability. Employees are provided with a copy of the Personnel Practices & Policies, Standards of Conduct, Whistleblower and Conflict of Interest Policies, Internet/Social Media Policy, as well as the Training and Orientation Manual at the time of employment and are asked to sign a form acknowledging receipt and adherence to the contents of each document. All employees, regardless of full-time, part-time, seasonal or year-round, must sign an acknowledgment of receipt and adherence to contents of these documents at the time of employment.

In addition to the Personnel Practices & Policies, Standards of Conduct, Whistleblower and Conflict of Interest Policies, Internet/Social Media Policy, as well as the Training and Orientation Manual, RTO has developed and implemented a number of policies and procedures that also addresses compliance including:

- Hiring Procedures including certifications, criminal background check, State Central Registry clearance, verification of social security number and eligibility to work, professional references, and verification of eligibility to bill Medicaid/Medicare.

- Records Management and Retention
- Incident Reporting
- Documentation of Services Rendered & Attendance
- Billing for Services including processes to detect, record and correct errors

2. Compliance Coordinator, Compliance Officer and Compliance Committee

RTO has a Corporate Compliance Coordinator who is responsible to monitor day to day compliance activities across the agency. The Compliance Coordinator is assisted in this function by the Corporate Compliance Officer and a Committee comprised of a Director of the Board and employees selected from throughout the agency. The Compliance Committee meets as needed to discuss best practices, monitor compliance activities, evaluate the effectiveness of the Compliance Program, and make recommendations regarding changes to the Compliance Program. From time to time the members of the Compliance Committee may be asked to assist with related investigations.

The Board of Directors of RTO is committed to compliance with all federal, state and local laws and regulations governing its programs and services and by Board Resolution adopts the establishment of this Corporate Compliance Program. The Board is represented on the agency's Corporate Compliance Committee and regularly monitors the effectiveness of the Program.

The Compliance Coordinator reports to the Executive Director and is responsible to:

- Review and revise, as appropriate, the overall Compliance Plan, the Standards of Conduct and other policies contained in or reference in the Compliance Program;
- Develop, approve and or monitor the educational and training materials and programs related to the Compliance Program and ensure that all employees attend required training sessions;
- Monitor internal auditing processes. Identify potential areas of risk or weaknesses and recommend changes/improvements as necessary; and report those recommendations to the Executive Director.
- Insure that independent contractors, vendors and relevant third parties are aware of RTO's Compliance Program;
- Direct or assist in the investigation and resolution, with the advice of legal counsel if deemed necessary, of reported or suspected concerns related to compliance;
- Develop and monitor policies and procedures that encourage employees to report suspected waste, abuse, fraud and other improprieties and noncompliance without fear of retaliation;
- Prepare periodic reports to the Compliance Officer, Executive Director and the Board of Directors, summarizing the activities undertaken in conjunction with the Compliance Program including records of meetings, training sessions, ongoing monitoring and auditing processes, and the status and resolution of any complaints or reports.
- Ensure with the Compliance Officer that the Executive Director is independently making compliance an integral part of their activities and message.

The Corporate Compliance Committee and Compliance Officer will assist the Corporate Compliance Coordinator in the aforementioned duties.

Neither the Compliance Coordinator, Compliance Officer, nor the Compliance Committee is responsible for the organization's actual compliance with applicable laws, rules and regulation. Rather the Compliance Coordinator, Compliance Officer and the Committee strive to ensure that the organization has in place at all times an effective Compliance Program and related policies and procedures that are appropriate for the organization and that are monitored and enforced on an ongoing basis.

3. Education and Training

RTO will provide its employees, agents and contractors with a copy of this Compliance Plan. RTO will attach this plan to its existing Personnel Practices & Policies, Training & Orientation Manual and policies and will provide training to its employees as part of their initial orientation to the agency and annually thereafter.

The Board of Directors will also be trained on the key elements of the Compliance Plan.

4. Internal Lines of Communication

RTO is committed to fostering open communications at all levels within the organization. Our goal is that all employees, vendors or contractors who have questions about a potential instance of waste, abuse or fraud, will report the situation to their supervisor, RTO's Executive Director, or to the Corporate Compliance Coordinator of Corporate Compliance Officer.

All employees must report actual or suspected misconduct which the individual has a good faith belief is occurring, including actual or potential violations of laws, regulations, policies, procedures, or of RTO's Standards of Conduct Policy. Failure to report is also deemed misconduct and a violation of this requirement.

Employees may also utilize the agency's employee hotline to report a problem. As further assurance of protection from retaliation, callers may remain anonymous.

Employees may contact any of the following to report a concern:

Charles Sutherland, Corporate Compliance Coordinator, 804-467-9319

Andrew Marrus, Corporate Compliance Officer, 917-359-2374

Robert Pacenza, Executive Director, 212-779-2725 or 917-363-9524

No attempt will be made to identify an individual who requests anonymity and the identity of known reporters will be held in confidence to the extent feasible and consistent with law.

If an employee believes that their problem or concern has not been resolved, the employee may pursue the report directly to the Corporate Compliance Officer.

All reports of suspected violations will be fairly, thoroughly and promptly investigated by the appropriate individuals and will be promptly resolved. To the extent possible without violating issues of confidentiality, the individual making a report will be advised that the matter has been investigated and resolved.

Any form of retaliation against any employee who in good faith reports a perceived problem or concern is prohibited. Regardless of the outcome of any subsequent investigation, as long as the report was made in good faith, the reporter cannot be subject to any adverse treatment or retaliation. An employee who commits, orders, or condones any form of retaliation, or attempts to deter reporting, will be subject to discipline up to and including termination.

Employees who take responsibility and report their own misconduct regarding improper or illegal conduct can rely on the fact that RTO will take the self-reporting into account in determining the appropriate course of action, even though an employee who self-reports will remain subject to appropriate discipline.

5. Disciplinary Guidelines

RTO takes compliance into consideration as an important component of employees' performance. Violations of internal policies or procedures, the agency's Standards of Conduct, or of applicable laws or regulations pertaining to the agency's programs and services, will be subject to disciplinary action. Sanctions may include verbal or written warnings, suspension, or termination of employment as appropriate. RTO does not employ or use individuals or entities excluded from participation in federal healthcare programs.

RTO will take appropriate measures to insure that all levels of management staff including the Executive Director, Director of Services & Operations and Assistant Director of Services as well as members of the Board of Directors support the Compliance Plan and encourage the reporting of problems or concerns. Toward that end, management staff will meet with their employees at least annually to discuss the main points of the Plan, will provide their employees with a copy of the Plan, and will post the Plan and related reporting procedures at the program location.

6. Monitoring and Auditing

RTO's Compliance Program includes activities to monitor, audit and evaluate compliance with the agency's policies and procedures and with federal, state and local laws and requirements. Our approach includes targeted monitoring and auditing in program and support areas, based on identified and prioritized risk areas. The extent and frequency of such reviews will vary depending on a variety of factors including changes in regulatory requirements, external audits, financial implications and changes in operations or business practices.

The Compliance Committee will monitor State and Federal work plans and audit results, review the results of internal audits and as necessary, formulate corrective action plans. Corrective action plans may include disciplinary action, education, or the development or revision of related policies and procedures.

7. Responding to Compliance Issues

As part of its Compliance Program, RTO will insure that all reports of suspected waste, fraud or abuse or violations of the agency Standards of Conduct will be immediately and objectively investigated and resolved promptly. Such investigations may be conducted by the Compliance Coordinator, Compliance Officer, members(s) of the Compliance Committee, other employees of the organization or other individuals as indicated or recommended by the Compliance Coordinator, Compliance Officer, the Executive Director or legal counsel.

The Corporate Compliance Officer will take immediate measures to secure relevant evidence or documentation and will insure the confidentiality of any information obtained from a report or through a subsequent investigation, unless otherwise required by law.

Unless a potential conflict of interest exists, the Compliance Officer will inform the Executive Director of any pending investigations and will consult with legal counsel as deemed necessary with the Executive Director.

The Compliance Officer will insure that a written record of the investigation and any subsequent corrective action is maintained in a secure location. The outcome of the investigation will be communicated confidentially to the Executive Director and to other employees or to members of the Board of Directors on a need to know basis.

8. Non-Intimidation and Protection from Retaliation

RTO is committed to protecting from retaliation, its employees and others who in good faith report problems and concerns. A threat or act of retaliation against an employee or other individual who has reported improper or illegal conduct can threaten the integrity of the agency's dedication to these standards by deterring the reporting of suspected misconduct and can limit RTO's ability to monitor and resolve issues of compliance.

RTO will take appropriate disciplinary action, up to and including termination of employment, for any employee who discharges, suspends, threatens, or otherwise discriminates against an employee who in good faith initiates or assists in reporting a suspected incidence of waste, fraud, or abuse or a violation of the agency's Standards of Conduct.

RTO's policy of non-intimidation and protection from retaliation will be reviewed with all employees during the initial training on the Compliance Plan, and during the annual training update.

Implementation

Rising Treetops at Oakhurst (RTO), in conjunction with our mission to improve the quality of life for children and adults with physical and developmental disabilities through recreational, educational, social and residential programs, conducts the following activities to help ensure Corporate Compliance and prevent fraud involving Medicaid or other funding sources:

1) Yearly comprehensive internal program reviews which include financial reviews and a review of the implementation of the agency's Corporate Compliance Plan. Internal program reviews include the following:

- Each location's Petty Cash Fund is reviewed to ensure all funds are accounted for.
- Review of implementation of the RTO's Corporate Compliance Plan which includes annual staff training for all staff, posting of corporate compliance contact information, knowledge of who the agency Corporate Compliance Officer is or how to access that information, and access to current Corporate Compliance Plan.

2) Regular review of billing which includes:

- Monthly, RTO's assistant director of services reviews the Overnight Respite attendance and service hours for billings to NYS OPWDD and NJ DDD, with quarterly reviews for such billings. These Overnight Respite billing reviews are completed prior to submission to the RTO's bookkeeping staff.
- Monthly review by Camp Oakhurst's assistant director of services of Day Respite service hours and attendance for reporting/billing.

4) A Billing Incident Review Committee is established to review all billing errors discovered by the agency. In cases where an error resulted in overpayment of funds, the error is rectified and funds are repaid to the funding source. Each situation is evaluated to determine if disclosure to OMIG is warranted.

5) As part of Rising Treetops at Oakhurst's incident review process, any theft of agency goods or resources by staff is reported immediately as a sensitive and priority incident to RTO's Executive Director. Confirmed theft of goods would be reported to local law enforcement officials and OMIG as appropriate.

6) Medicaid Exclusion Checks are conducted annually for all RTO staff, contract staff, and vendors. This ensures that RTO's staff and vendors have not been involved in fraudulent activities involving Medicaid funds. RTO will terminate its relationship with any staff or vendor found to have been involved in fraudulent activities related to Medicaid funds.

Relevant Laws

Attached to this Compliance Plan is a summary of the relevant federal and state laws. This list has been derived from the website of the NYS Office of the Medicaid Inspector General and is made available for the information and use of RTO employees, volunteers, vendors and contractors.

RISING TREETOPS AT OAKHURST

CORPORATE COMPLIANCE PROGRAM

Federal and New York State Statutes Relating to False Claims

Overview of Relevant Laws:

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

The False claims Act is a federal law designed to prevent and detect fraud, waste and abuse in federal healthcare programs, including Medicaid and Medicare. Under the False Claims Act, anyone who “knowingly” submits false claims to the Government is liable for damages up to three times the amount of the erroneous payment plus mandatory penalties of \$5,000 to \$10,000 for each false claim submitted.

The law was revised in 1986 to expand the definition of “knowingly” to include a person who:

- Has actual knowledge of falsity of information in the claim;
- Acts in deliberate ignorance of the truth or falsity of the information in the claim; and
- Acts in reckless disregard of the truth or falsity of the information in a claim.

False Claims suits can be brought against individuals and entities. The False Claims Act does not require proof of a specific intent to defraud the Government. Providers can be prosecuted for a wide variety of conduct that leads to the submission of a false claim.

Some examples include:

- Knowingly making false statements;
- Falsifying records;
- Submitting claims for services never performed or items never furnished;
- Double-billing for items or services;
- Using false records or statements to avoid paying the Government;
- Falsifying time records used to bill Medicaid; or
- Otherwise causing a false claim to be submitted.

Whistleblower or “Qui Tam” Provisions:

In order to encourage individuals to come forward and report misconduct involving false claims, the False Claims Act contains a “Quit Tam” or whistleblower provision.

The Government, or an individual citizen acting on behalf of the Government, can bring actions under the False Claim Act. An individual citizen, referred to as a whistleblower or “Relator,” who has actual knowledge of allegedly false claims may file a lawsuit on behalf of the U.S. Government. If the lawsuit is successful, and provided certain legal requirements are met, the whistleblower may receive an award ranging from 15% - 30% of the amount recovered.

Employee Protections:

The False claims Act prohibits discrimination by New York Service of the Handicapped against any employee for taking lawful actions under the False Claims Act. Any employee who is discharged, demoted, harassed, or otherwise discriminated against because of lawful acts by the employee in False Claims actions is entitled to all relief necessary to make the employee whole. Such relief may include reinstatement, double back pay, and compensation for any special damages, including litigation costs and reasonable attorney fees.

II. Administrative Remedies for False Claims (31 USC Chapter 38. §§3801-3812).

This federal statute allows for administrative recoveries by federal agencies including the Department of Health and Human Services, which operates the Medicare and Medicaid programs. The law prohibits the submission of a claim or written statement that the person knows or has reason to know is false, contains false information or omits material information. The NYSC receiving the claim may impose a monetary penalty of up to \$5,500 per claim and damages of twice the amount of the original claim.

Unlike the False Claims Act, a violation of this law occurs when a false claim is submitted, not when it is paid. Also unlike the False Claims Act, the determination of whether a claim is false, and imposition of fines and penalties is made by the administrative RTO, and not by prosecution in the federal court system.

III. New York State Laws

A. Civil and Administrative Laws

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

The New York State False Claims Act closely tracks the federal False Claims Act. It imposes fines on individuals and entities that file false or fraudulent claims for payment from any state or local government, including health care programs such as Medicaid.

The penalty for filing a false claim is \$6,000 - \$12,000 per claim and the recoverable damages are between two and three times the value of the amount falsely received. In addition, the false claim filer may be responsible for the government's legal fees.

The Government, or an individual citizen acting on behalf of the Government (a "Relator"), can bring actions under the New York State False Claims Act. If the suit eventually concludes with payments back to the government, the party who initiated the case can recover 15% - 30% of the proceeds, depending upon whether the government participated in the suit. The New York State False Claims Act prohibits discrimination against an employee for taking lawful actions in furtherance of an action under the Act. Any employee who is discharged, demoted, harassed, or otherwise discriminated against because of lawful acts by the employee in furtherance of an action under the False Claims Act is entitled to relief necessary to make the employee whole.

Social Service Law §145-b False Statements

It is a violation to knowingly obtain or attempt to obtain payment of items or services furnished under any Social Services program, including Medicaid, by use of a false statement, deliberate concealment or other fraudulent scheme or device. The State or the local Social Services district may recover up to three times the amount of the incorrectly paid claim. In the case of non-monetary false statements, the local Social Service district or State may recover three times the amount incorrectly paid. In addition, the Department of Health may impose a civil penalty of up to \$2,000 per violation. If repeat violations occur within five years, a penalty up to \$7,500 may be imposed if they involve more serious violations of the Medicaid rules, billing for services not rendered, or providing excessive services.

Social Service Law §145-c Sanctions

If any person applies for or receives public assistance, including Medicaid, by intentionally making a false or misleading statement, or intending to do so, the person's and the person's family needs are not taken into account for a period of six months to five years, depending upon the number of offenses.

B. Criminal laws

Social Service Law §145 Penalties

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

Social Service Law § 366-b, Penalties for Fraudulent Practices

Any person who, with intent to defraud, presents for payment any false or fraudulent claim for furnishing services or merchandise, knowingly submits false information for the purpose of obtaining Medicaid compensation greater than that to which he/she is legally entitled to, or knowingly submits false information in order to obtain authorization to provide items or services shall be guilty of a Class A misdemeanor.

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

Penal Law Article 155, Larceny

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

Penal Law Article 175 Written False Statements

There are four crimes in this Article that relate to filing false information or claims. Actions include falsifying business records, entering false information, omitting material information, altering an RTO's business records, or providing a written instrument (including a claim for payment) knowing that it contains false information. Depending upon the action and the intent, a person may be guilty of a Class A misdemeanor or a Class E felony.

Penal Law Article 176, Insurance Fraud

This Article applies to claims for insurance payment, including Medicaid or other health insurance. The six crimes in this Article involve intentionally filing a false insurance claim. Under this article, a person may be guilty of a felony for false claims in excess of \$1,000.

Penal Law Article 177, Health Care Fraud

This Article establishes the crime of Health Care Fraud. A person commits such a crime when, with the intent to defraud Medicaid (or other health plans, including non-governmental plans), he/she knowingly provides false information or omits material information for the purpose of requesting payment of a health care item or service and, as a result of the false information or omission, receives such a payment in an amount to which he/she is not entitled. Health Care Fraud is punished with fines and jail time based on the amount of payment inappropriately received due to the commission of the crime.

New York Labor Law §740

An employer may not take any retaliatory personnel action against an employee if the employee discloses information about the employer's policies, practices or activities to a regulatory, law enforcement or other similar RTO or public official.

This law offers protection to an employee who:

- discloses, or threatens to disclose, to a supervisor or to a public body an activity, policy or practice of the employer that is in violation of law, rule or regulation that presents a substantial and specific danger to the public health or safety, or which constitutes health care fraud (knowingly filing, with intent to defraud, a claim for payment that intentionally has false information or omissions;
- provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any such violation of a law, rule or regulation by the employer; or
- objects to, or refuses to, participate in any such activity, policy or practice in violation of a law, rule or regulation.

The employee's disclosure is protected under this law only if the employee first brought up the matter with a supervisor and gave the employer a reasonable opportunity to correct the alleged violation. The law allows employees who are the subject of a retaliatory action to bring a suit in state court for reinstatement to the same, or an equivalent position, any lost back wages and benefits and attorney's fees. If the employer is a health care provider and the court finds that the employer's retaliatory action was in bad faith, it may impose a civil penalty of \$10,000 on the employer.

New York Labor Law §741

Under this law, a health care employer may not take any retaliatory action against an employee if the employee discloses certain information about the employer's policies, practices or activities to a regulatory, law enforcement or other similar agency or public

official. Protected disclosures are those that assert that, in good faith, the employee believes constitute improper quality of patient care.

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