

BROOME COUNTY MENTAL HEALTH DEPARTMENT



**Broome County Mental Health Department
1 Hawley Street
Binghamton, NY 13901**

**Arthur Johnson, LCSW
Commissioner of Mental Health Services**

Statement: *The US Department of Health and Human Services, Office of the Inspector General (OIG) has mandated compliance with health care regulations by the health care industry to insure that claims submitted to Federal Health Care Programs are true and accurate. The NYS Medicaid Office of the Medicaid Inspector General (OMIG) has promulgated rules and regulations in compliance with Federal and State laws to insure that claims submitted to State Health Care Programs are true and accurate. There are both civil and criminal legal penalties for failure to adhere to a Compliance Plan and for failure to follow the law.*

The Broome County Mental Health Department (BCMHD) has adopted a corporate compliance plan for its clinic and extended clinic operations in Broome County. This policy is one of three in operation within the Broome County Government and shall be referred to as the Mental Health Department Compliance Plan (MHD Plan). The policy has been developed in accordance with industry standards and the requirements of the Deficit Reduction Act of 2005 (the DRA), compliance advisories published by the Department of Health and Human Services Office of the Inspector General (OIG), New York CRR Title 18, Part 451, advice and guidance from the New York Office of the Medicaid Inspector General (OMIG), and applicable state regulations regarding program integrity.

Policy Statement

It is the policy of the BCMHD to conduct itself according to the highest business and community ethics and standards. We are committed to high quality, relevant, and accessible mental health services for children, families and adults who are affected by emotional disturbance and mental illness.

All BCMHD employees, agents, and independent contractors are held to these same standards and are expected to assist in the detection and prevention of fraud, abuse and waste through compliance with the following law, regulations, and policies of the county, including but not limited to:

Federal Laws:

- The Federal False Claims Act
- Administrative Remedies for False Claims
- The Anti-kickback Statute
- Stark Law

New York State Laws:

- New York False Claims Act
- Social Services Law
- Penal Law Article 155, 175, 176, 177
- New York Labor Law Sections 740, 741

New York State Regulations including Parts 505.16, 521, 587, 588, 800, and 822
New York Office of Mental Health Licensing Criteria
Detailed information on the laws cited can be found in Appendix A.

OVERSIGHT RESPONSIBILITY

A Corporate Compliance Officer (CCO) has been designated by the BCMHD. The CCO is responsible for overseeing the Corporate MHD Committee, consisting of the Commissioner of Mental Health Services, Deputy Commissioner of Mental Health Services/CCO, Deputy Commissioner of Administrative Services for DSS/Mental Health, Director of Clinical Services and the Health Information Administrator.

The **duties and responsibilities of the CCO** or his or her designee are:

- Implementation and maintenance of the MHD Plan and its policies and procedures;
- Effectively communicate the code of conduct and the MHD Plan and its policies and procedures by conducting training sessions for all affected staff, agents, and independent contractors;
- Regularly report compliance program activity and outcomes to the Deputy County Executive for Human Services. The CCO will be responsible for ensuring that meeting minutes are kept along with copies of any reports given to the Deputy County Executive for Human Services.
- Investigates matters related to Corporate Compliance issues, including hotline reports, and employee, consumer and/or payer complaints;
- Work in conjunction with the Committee to oversee that the department takes reasonable steps to achieve compliance with its standards by utilizing monitoring and auditing systems reasonably designed to detect misconduct by its employees and agents;
- Develop and implement an employee feedback loop which encourages employees to report potential problems without fear of retaliation;
- Follow through on any detected or reported incidents of possible misconduct under the direction and supervision of the County Personnel Department;
- Ensure that those who make good faith reports of potential misconduct are protected from retaliation;
- Ensure that all relevant documentation is organized and stored in the MHD Compliance Program files. This includes all meeting minutes, training information, results of investigations, etc.

The **Corporate MHD Committee will be responsible** for ensuring:

- Development of the annual Compliance Work Plan;
- Periodic review and update of the MHD Plan as changes occur within Broome County and in the law and regulations of governmental and third party payers;
- Ensure the department takes reasonable steps to achieve compliance with its standards by reviewing internal monitoring and auditing systems and training in identified risk areas;
- Ongoing implementation of county-wide training and communication programs to ensure that all employees and affiliated parties are educated in the Compliance Plan, Policies and procedures, laws, regulations and other issues as are deemed necessary;
- Effective communication of Broome County's Compliance Plan requirements to independent contractors and agents;
- The MHD Committee will report at least annually to the Broome County Executive or a duly appointed designee and anytime the committee deems it significant and necessary. The MHD Committee will be responsible for ensuring that all meeting members document their attendance and that minutes of the meeting are kept;
- Delegate appropriate levels of monitoring and review of systems to other staff, agents, and independent contractors and outside agencies to promote effectiveness, efficiency, and to avoid any potential conflicts of interest.

The Broome County Attorney's office will be required to render all legal opinions and advise the MHD Committee on developments and changes in laws, regulations, and policies that affect the compliance program. The Broome County Personnel Department will advise on any enforcement or discipline pertaining to reports of misconduct.

COMMUNICATION AND TRAINING

All BCMHD staff, agents, and independent contractors, will be aware of Code of Conduct expectations of the Compliance Program and report any suspected violation to reasonably ensure that all activities are in compliance with the Department's standards and procedures.

Every employee and agent is expected to be familiar and knowledgeable about the MHD Plan and have a solid working knowledge of his or her responsibilities under the Plan. Compliance policies and standards will be communicated to all employees through required participation in training programs.

Employees who fail to attend required compliance training will be subject to disciplinary action.

Information regarding the Compliance Program will be included in all new employees' orientation training and included with all new agent contracts.

Annual review of the Compliance Program will be included in the BCMHD mandatory in-services for all staff, agents, and independent contractors.

All staff, agents, and independent contractors will attest that he/she will comply with the MHD Program and understand the consequences of violation(s) of the program.

All staff will attend as required detailed training on department specific risk areas.

Attendance of all training related to compliance or department specific risk areas will be taken and reported to the CCO. The information should include the sign in sheet, a copy of the curriculum and/or slides and handouts, and any evaluation of the training completed by attendees.

The CCO will report to the MHD Compliance Committee on annual all training that has occurred.

A compliance poster will be posted to assist in communication of:

- Policy and procedures of the program
- Compliance Hotline number for reporting concerns, misconduct, or questions.
- Where to get additional information.

INTERNAL MONITORING AND AUDITING

Ongoing evaluation is critical in detecting non-compliance and will help ensure the success of Broome County's Compliance Program. An ongoing auditing and monitoring system, at the direction of the CCO, in consultation with the MHD Committee, is an integral component of our auditing and monitoring activity.

Internal auditing and monitoring will be conducted in risk areas identified on an on-going basis by the CCO and/or the MHD Committee. These risk areas will include but not be limited to:

- (1) billings;
- (2) payments;
- (3) medical necessity and quality of care;
- (4) governance;

(5) mandatory reporting;

(6) credentialing; and

(7) other risk areas, including any Corrective Action Plans that have been submitted to external authorities

The audits and reviews will examine Broome County's compliance with specific rules and policies through on-site visits, personnel interviews, general questionnaires, review of contracts, training records, billing and other financial records, and client record documentation reviews.

Auditing and monitoring procedures have been developed to ensure that billing of third party payers will not occur until specific expectations have been met, including the appropriate documentation of all services billed.

The BCMHD will have the Broome County Law Department conduct annual reviews for all business and contractual agreement relationships to reasonably ensure that activities are in compliance with the organizations standards and procedures.

Employees associated with the BCMHD who have identified outside party interests that represent potential conflicts of interest must provide a yearly disclosure statement. The Broome County Board of Ethics reviews all disclosure statements, and is maintained by the Broome County Legislature.

The BCMHD will conduct an annual review of its billing practices to reasonably ensure that all activities are in compliance with the department's standards and procedures.

The BCMHD will have an annual independent financial audit conducted by certified public accountants to examine evidence of supporting the proper handling and reporting of amounts and disclosures relating to financial activity of the organization.

Anyone receiving notice of any non-routine visits, audits, investigations or surveys by any federal or state agency or authority shall be cooperative and report the activity or notices to the Commissioner of Mental Health Services and the CCO immediately. The CCO will notify the Deputy County Attorney. If neither the Commissioner nor the CCO is available the Deputy County Attorney should be notified directly.

INTERNAL REPORTING AND RESPONSE SYSTEM

All employees of the BCMHD and its agents have a duty to report suspected misconduct, anonymously if they choose, and without fear of retaliation or breach of confidentiality.

If an employee, contractor or agent witnesses, learns of, or is asked to participate in an activity that could potentially violate or is suspected or known to violate this Compliance Plan or any Broome County policy, or any law or regulation he or she must report the request and the activity. Employees, agents and contractors are encouraged to contact

their acting supervisor or department head first. However, all staff can report any questions or concerns related to this policy to the CCO, any member of MHD Committee, or any other manager within the BCMHD.

Individuals may report in any one of the following ways:

- directly in person;
- via telephone or voicemail confidentially;
- written report by mail or place in the mailbox of the CCO or an MHD Committee member;
- Individuals who wish to **anonymously** report suspected violations of the Plan may:
 - submit the complaint in the Department's Anonymous Drop Box; or
 - call the Compliance Hotline

If the reporter requests confidentiality, the BCMHD will make every effort to maintain, within the limits of the law, the confidentiality or the identity of any individual who reports the possible misconduct.

In the event an anonymous report is received no attempt will be made to identify the reporter. However, those who report anonymously should make every attempt to include all relevant detail so that the report may be properly investigated.

There will be no retribution or discipline for anyone who reports a possible violation in good faith. Any employee who deliberately makes a false accusation with the purpose of harming or retaliating against another employee will be subject to discipline. Any employee who is a party to any fraudulent or illegal activity may be appropriately disciplined.

Reports received by any supervisor or manager or members of the MHD Committee should be communicated to the CCO. If illegal activity is suspected, the matter should be reported immediately to the CCO and no further action taken by the person receiving the report.

BACKGROUND INVESTIGATIONS AND DISCIPLINE

BCMHD will ensure that there is a reasonable and prudent background investigation, including a reference check, as part of every employment application as required by law, regulation or policy. Background checks may include fingerprinting, criminal background investigations, professional license verification, driver's license verification, GAO Debarred Contractors Listing, and OIG exclusion verification.

Employees who fail to comply with the BCMHD's compliance policy and standards, or who have engaged in conduct that has the potential of impairing Broome County's status as a reliable, honest, and trustworthy service provider will be subject to disciplinary action, up to and including termination. Any discipline will be appropriately documented in the employee's personnel file, along with a written statement of reason(s) for imposing such discipline. The CCO shall be responsible for reporting to the MHD Committee and the Deputy Director of Health and Human Services annually on compliance related disciplinary actions taken.

Standards of conduct as set forth in the Broome County Government's Employee Handbook, BCMHD Code of Conduct and the Department's various Policies and Procedures manual will be enforced through appropriate disciplinary mechanisms.

- Disciplinary procedures for noncompliance of the Corporate Compliance Program will follow the guidelines under existing Broome County Government and BCMHD's Personnel policies. Charges may be brought against the person, according to the appropriate collective bargaining agreement and/or Civil Service Law.
- The person in question will have an opportunity to respond to the allegations or misconduct, which will follow the guidelines under existing Broome County Government and BCMHD Personnel policies, collective bargaining agreement(s) and/or Civil Service Law, as applicable.
- Disciplinary measures and procedures may involve investigation and/or direction from outside third-parties (e.g. – governmental policy, law enforcement agencies) and may result in fines, reimbursement of funds, and criminal prosecution.

MHD Compliance Program requires that the promotion of, and adherence to the elements of the Compliance Program be a factor in evaluating the performance of all BCMHD employees.

Disciplinary actions and performance evaluations of supervisors include their compliance related activities in their area of supervision. All managers and supervisors will:

- Discuss with all supervised employees the compliance policies and legal requirements applicable to their function;
- Inform all supervised personnel that strict compliance with these policies and requirements is a condition of employment;
- Disclose to all supervised personnel that Broome County will take disciplinary action up to and including termination for violation of these policies and requirements.

In the event that a report is made to a director, manager, or acting supervisor and that responsible party fails to act upon the report, the responsible party is subject to corrective action.

In situations where reasonable diligence on the part of the director, manager or acting supervisor would have led to the earlier discovery of any problem or violation and would

have provided Broome County the opportunity to correct them, the responsible party will be subject to corrective action.

Any serious concerns that may require disciplinary action will be directed to the Broome County Attorney's Office or the Broome County Personnel Department for an opinion, advice and direction on any further investigation, enforcement, or disciplinary actions.

Reports of misconduct that do not warrant further investigation or review with the County Attorney's Office or the County Personnel Department will be clearly documented as to the reason why the investigation ended.

The MHD Committee will oversee any corrective action when misconduct is detected, including training or retraining of staff, agents, and independent contractors and policy/procedure modifications to prevent any further incidents of a similar type.

INVESTIGATIONS AND RESPONSE

If as a result of any audit, report, observation, or by any other means, the CCO, County Executive and/or the MHD Committee determines that there is any basis to suspect that a violation of the MHD Plan may have occurred, the matter shall be referred by the CCO to legal counsel, who, with the assistance of the CCO, shall conduct a more detailed investigation if warranted. This investigation may include, but is not limited to, the following:

- Interviews with individuals having knowledge of the facts alleged,
- A review of documents, and
- Legal research and contact with governmental agencies for the purpose of clarification.

If advice is sought from a governmental agency, the request and any written or oral response shall be fully documented.

Any written legal response or self-disclosure to either federal or state entities will be reviewed with legal counsel in attendance. Any additional action will be on the advice of counsel.

The CCO shall report to the MHD Committee regarding each investigation conducted.

The CCO will report to the Deputy County Executive of Health and Human Services each investigation conducted. These reports may be aggregated and reported with other compliance activities.

If the investigation identifies that an overpayment was received from any payer, the payer will be notified by the proper internal BCMHD staff. The overpayment shall be repaid to the affected payer according to the payer's policy. Systems shall also be implemented and routinely monitored to prevent such overpayments in the future.

If the investigation recommends additional training or changes in policy and procedure, these will be reported to the MHD Committee for follow-up.

If the investigation recommends disciplinary actions, these will be reported to the MHD Committee and Personnel department for follow-up.

Regardless of whether a report is made to a governmental agency, the CCO shall maintain a record of the investigation, including copies of all pertinent documentation. This record will be considered confidential and privileged and will not be released without the approval of the Deputy County Executive of Health and Human Services or legal counsel.

WHISTLEBLOWER PROVISIONS AND PROTECTIONS

Broome County will extend to its employees all protections afforded to them under the applicable State and federal Whistleblower laws including the Federal False Claims Act, the New York State False Claims Act and the New York Civil Service Law. Private contractors may find protections under the New York State Labor Law as well as the False Claims Acts. Memo from the County Executive to all Broome County employees can be found in Appendix B.

Appendix A

Summary of Federal and New York State Laws on False Claims, False Statements and Whistleblower Protections

1. Federal Laws

1.1. Federal False Claims Act [31 U.S.C. §§ 3729-3733]

The Federal False Claims Act allows the United States Attorney General or a private citizen to sue an individual or an entity for making certain “false claims” in connection with government business.

A person makes a false claim if he or she:

- knowingly presents a false claim for payment or approval to a federal government officer or employee;
- knowingly makes or uses a false record or statement to get a false or fraudulent claim paid by the federal government;
- conspires to defraud the federal government by getting a false claim paid;
- has property or money used by the federal government and delivers less than the amount for which he or she gets a receipt, with the intent to defraud the federal government;
- gives a receipt to the federal government without completely knowing that the information on the receipt is true, with the intent to defraud;
- knowingly buys or receives a pledge of public property from a federal government officer or employee who cannot lawfully sell the property; or
- knowingly makes or uses a false statement to conceal, avoid or decrease an obligation to pay money to the federal government.

A person can be found to have “knowingly” made a false statement if he or she acted in deliberate ignorance or reckless disregard of the truth of the statement.

A person who knowingly makes a false claim may be held liable to the federal government for a civil penalty of \$5,000 to \$10,000. He or she may also be liable for two or three times the amount of damages the federal government sustained. Whether the damages are doubled or tripled depends on whether the person cooperated with the government and other factors.

A suit for a false claim can be initiated by the United States Attorney General or by a private citizen who has independent knowledge of the facts. A private citizen wishing to

bring a federal False Claims Act suit can only do so within the following time limits, whichever occurs last:

- within six years after the false claim was made; or
- within three years after the government should have become aware of the false claim, but in no event more than ten years from when the violation was committed.

A private citizen who brings a false claims suit must do so in the name of the federal government. After the private citizen (the “relator”) prepares a formal complaint and serves it on the government, along with all information that he or she has, the government may decide to take over the suit. If the government takes over the suit, it is not bound by the decisions of the relator, and the government can dismiss or settle the suit even if the relator objects. The relator may remain in the suit, or the court may limit the relator’s participation.

If the government informs the court that it does not want to take over the suit, the private party can continue with the suit, if he or she is an original source of the information on which it is based. If the private party continues with the suit but does not prevail, the private party may have to pay the defendant’s reasonable attorney’s fees and expenses, if the court finds that the action was frivolous or was brought to harass the defendant.

If the government prosecutes the suit and prevails, the relator who brought the case to the government may receive 15% to 25% of the court award or settlement, depending on his or her contributions to the proceeding. The relator will also be awarded reasonable expenses and attorney’s fees. However, if the suit was based primarily on information from another case, a government report or the news media, the relator may be awarded no more than 10% of the award or settlement.

If the government does not take over the action and the relator prevails, the relator will receive 25% - 30% of the court award or settlement plus his or her reasonable expenses and attorney’s fees. Whether or not the government proceeds with the action, however, if the relator planned or initiated the false claim in the first place, he or she may recover nothing.

An employee who is discharged, demoted, suspended, threatened, harassed or discriminated against because he or she brought or participated in a False claims Act suit may be entitled to reinstatement, double back pay plus interest, and compensation for other damages that he or she proves. In order to seek such relief, the individual must bring a separate action in federal court.

1.2. Federal Administrative Remedies for False Claims and Statements [31 U.S.C. §§ 3801 – 3812]

In addition to a suit under the False Claims Act, the federal government (but not a private citizen) can seek administrative penalties against a person or entity for making false claims. An individual or entity may be subject to administrative penalties for making or submitting a claim that the person knows or has reason to know is:

- false or fraudulent;
- includes or is supported by a written statement that includes false information or omits certain material facts; or
- is for payment for property or services the person has not provided as claimed.

Any person make such a false claim may be required, after a hearing, to pay a maximum penalty of \$5,000 per claim and an assessment of up to double the amount of the claim.

1.3. Prohibitions under the Social Security Act [42 U.S.C. §§ 1320a-7a-1320a-7b]

The Social Security Act allows the government to impose civil penalties for various offenses. Examples of these offenses include improperly submitting claims for medical services (such as false claims or medically unnecessary claims); offering kickbacks, and making payments to induce the reduction or limitation of services.

The Social Security Act sets out criminal and civil penalties for making certain kinds of false statements in connection with federal health care programs, including Medicare. False statements made by a provider of items or services may constitute a felony punishable by a fine of up to \$25,000 and five years in jail, or both. Knowingly and willfully making false statements to qualify an institution for which certification is required is a felony punishable by a fine of up to \$25,000 or up to five years in jail, or both. Certain “illegal patient admittance and retention practices” are also punishable by a fine of up to \$25,000 or five years in prison, or both.

1.4. Health Care Fraud [18 U.S.C. § 1347]

It is illegal to knowingly and willfully execute or attempt to execute a scheme to either defraud a health care benefit program or to obtain money or property from a health care benefit program by means of false pretenses or representations. The penalty for such actions in connection with the delivery of or payment for health care items or services may be a fine or up to ten years imprisonment, or both. If the violation results in serious bodily injury, the penalty may be a fine or imprisonment of up to 20 years, or both; if the violation results in death, the person may be fined or imprisoned for any terms of years or for life.

1.5. False Statements Relating to Health Care Matters [18 U.S.C. § 1035]

In a matter involving a health care benefit program, it is illegal for any person to knowingly and willfully falsify, conceal or cover up by a trick, scheme or device a material fact; make any materially false, fictitious or fraudulent statement or representation; or make or use a materially false document knowing that it contains materially false statements. The penalty may be a fine or imprisonment for up to five years, or both.

1.6. Theft or Embezzlement in Connection with Health Care [18 U.S.C. § 669]

It is illegal to knowingly and willfully embezzle, steal, convert or intentionally misapply money or assets of a health care program. The penalty may be a fine or up to ten years imprisonment, or both.

1.7. Other Federal Laws Relating to False Claims and False Statements

1.7.1. Mail and Wire Fraud [18 U.S.C. § 1341]

It is illegal to engage in a scheme to defraud or to obtain money or property by means of false or fraudulent pretense, representations or promises by using the U.S. mail or a commercial interstate carrier. Penalties may be fines or imprisonment for up to 20 years, or both.

1.7.2. Laundering of Monetary Instruments [18 U.S.C § 1956]

The federal money-laundering statute prohibits the laundering or transportation of funds from certain illegal activities. The penalties for violation are fines and imprisonment or both.

1.7.3. Racketeer Influenced and Corrupt Organizations ("RICO") [18 U.S.C. §§ 1961- 1968]

The RICO law prohibits certain "racketeering activity," including mail fraud. It is illegal to invest the profits from a pattern of racketeering activity or collection of an unlawful debt in any business which affects interstate or foreign commerce. The penalty is a fine or up to 20 years in prison (or life imprisonment, if that penalty applies to the underlying crime) or both. The defendant may also be ordered to forfeit property to the government. Any person whose business or property is injured by the violation of these provisions can seek to recover in court three times the amount of damages he or she sustained, plus reasonable attorneys' fees and expenses.

2. New York State Laws Regarding False Claims or Statements

2.1. False Statements Relating to the Medicaid Program [Social Services Law § 145-b]

Under New York state law, it is illegal for a person, firm, or corporation to knowingly obtain or attempt to obtain payment from public funds for social services, including medical services, by:

- making false statement or representation;
- deliberately concealing a material fact; or
- a fraudulent scheme.

Any person or entity that obtains or attempts to obtain such payment may be ordered to pay damages of three times the amount that was overstated. If the false statement was

nonmonetary, the damages may be three times the amount of loss that the state or other governmental entity incurred. In addition, if a provider of medical services is required to refund a payment received from the state or local government, the repayment must be made with interest.

In addition to requiring repayment of improperly claimed funds, the Department of Health may impose a penalty of up to \$2,000 per item or service; if the provider has been subject to another penalty within the prior five years, the maximum penalty is \$7,500 per item or service. These penalties may be imposed for:

- failing to comply with the standards of the medical assistance program;
- failing to comply with generally accepted medical practices in a substantial number of cases; or
- gross and flagrant violation of generally accepted medical standards; *if that person also* receives payment for claims when the provider knew, or had reason to know that:
 - the care, services or supplies ordered or provided were medically improper, unnecessary or in excess of the medical needs of the patient;
 - the care, services or supplies were not provided as claimed;
 - the person who ordered or prescribed the care which was medically improper, unnecessary or in excess of the medical needs of the patient was suspended or excluded from the medical assistance program; or
 - the services or supplies were never provided to the patient.

Making a false statement means making, or inducing or seeking to induce another person to make a false, fictitious or fraudulent statement or misrepresentation of material fact in claiming a Medicaid payment or for use in determining the right to payment.

Concealing or failing to disclose an event that affects the right to payment with the intention that a payment be made when unauthorized or in an amount greater than the amount due, is also an unacceptable practice in the Medicaid program.

2.3. Criminal Prohibitions under New York Law

IN certain circumstances, a person who makes false statements may be charged criminally under New York law. Each of the following crimes may be a misdemeanor or a felony, depending on the intent of the perpetrator and the amount involved. Penalties include fines or imprisonment, or both.

2.3.1 Fraudulent Practices [New York Social Services Law § 366-b]

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

2.3.2 Larceny [New York Penal Law Article 155]

The crime of larceny applies to a person who, with intent to deprive another of his property, obtains, takes or withholds the property by means of trick, embezzlement, false pretense, false promise, including a scheme to defraud, or other similar behavior. Larceny may be a Class B, C, D, or E felony, depending upon the amount involved.

2.3.3 Falsifying Business Records [New York Penal Law § 175.00-175.15]

Business records are defined as any writings, including computer data that are kept or maintained by an enterprise to evidence its condition or activity. A person may be found guilty of falsifying business records if, with the intent to defraud, he or she:

- makes or causes a false entry in the business records;
- alters, erases, obliterates, deletes, removes or destroys a true entry in business records;
- omits to make a true entry in business records when required to do so by law or his or her position; or
- prevents the making of a true entry or causes the omission of a true entry in business records.

It is a defense to a charge of falsifying business records if the person was merely an employee who, without any personal benefit, executed the orders of a superior.

2.3.4 Tampering with Public Records [New York Penal Law §§ 175.20-175.25]

A person may be found guilty of tampering with public records if he or she knowingly removes, mutilates, destroys, conceals, makes a false entry in or falsely alters any record or other written instrument filed with, deposited in, or otherwise constituting a record of a public office or public service, when he or she knows he or she does not have the authority to do so.

2.3.5 Offering a False Instrument for Filing [New York Penal Law §§ 175.30-175.35]

A person may be found guilty of offering a false statement for filing if he or she, knowing that a written instrument contains false information, offers or presents it to a public office with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office.

2.3.6 Insurance Fraud [New York Penal Law Article 176]

It is a crime to file a health insurance claim, knowing that it is false. Insurance fraud may be a Class A misdemeanor or a Class B, C, D, or E felony, depending upon the amount involved. It is also a Class D felony to commit insurance fraud more than once.

2.3.7 Health Care Fraud [New York Penal Law Article 177]

Health care fraud includes knowingly filing, with intent to defraud, a claim for payment that intentionally has false information or omissions. Health care fraud may be a Class A misdemeanor or a Class B, D, D, or E felony, depending upon the amount involved.

2.4 New York Laws Prohibiting Retaliation

2.4.2 Prohibitions on Employers [New York Labor Law §§ 740]

Under New York law, an employer cannot take any retaliatory personnel action (discharge, suspension, demotion, or other adverse employment action) against an employee because the employee:

- Disclosed or threatened to disclose to a supervisor or to a public body an activity of the employer that is illegal and that presents a substantial and specific danger to public health or safety;
- Provides information to or testifies before a public body that is conducting an investigation or hearing into the employer's violation of law; or
- Objects to or refuses to participate in the illegal activity of the employer.

A "public body" includes the U.S. Congress, the state legislature, any elected local governmental body, any federal, state or local judiciary, a grand jury or petit jury, any federal, state or local regulatory, administrative or public agency or authority, any law enforcement agency, a prosecutorial office or a police officer.

For an employee to be protected against retaliatory action for disclosing to a public body an activity of the employer that is illegal and that presents a substantial and specified danger to public health or safety, the employee must first report the violation to his or her supervisor and give the employer a reasonable opportunity to correct the activity.

If the employee is subjected to retaliation, he or she has one year from the retaliatory personnel action to bring a civil action in court. If the employee prevails in that suit, he or she may be reinstated and may receive lost wages and reasonable costs and attorney's

fees. If, however, the court finds that the employee brought the suit without a basis in law or fact, the court may award the employer its costs and reasonable attorney's fees.

In any court action brought under this law, it is a defense for the employer if the personnel action was based on grounds other than the employee's exercise of protected rights.

2.4.3 Health Care Facilities [New York Labor Law § 741]

Employees who perform health care services for certain health care facilities have additional protections against retaliatory personnel actions. Health care facilities include, among others: hospitals, nursing homes, and other facilities licensed under Article 28 of the Public Health Law; home care services agencies and certified home health agencies; and facilities that provide health care services under the Mental Hygiene Law. A health care facility employee covered by this statute has two years to bring suit if he or she is subject to a retaliatory personnel action for:

- Disclosing to a supervisor or public body that he or she reasonably believes, in good faith, that the employer is providing "improper quality of patient care," as defined below; or
- Objecting to or refusing to participate in any practice of providing "improper quality of patient care."

"Improper quality of patient care" means a practice or action, or a failure to act, that violates a law or regulation if the violation relates to matters that may present a substantial and specific danger to public health or safety or a significant threat to the health of a specific patient. In order to be protected against retaliation, the employee must first bring the matter to the attention of his or her supervisor and give the employer a reasonable opportunity to correct the problem, unless there is an immediate threat to health or safety and the employee reasonably believes in good faith that reporting to the supervisor will not result in corrective action.

The court may award a covered employee back pay, costs and attorneys and may order that he or she be reinstated. If the court finds that the employer acted in bad faith, it may assess a civil penalty of up to \$10,000, to be paid into a fund for improving quality of patient care.

In any court action brought under this law, it is a defense for the employer if the personnel action was based on grounds other than the employee's exercise of protected rights.

APPENDIX B
Executive Order / Whistle Blower Procedure

TO: All Department Heads

FROM: Barbara Fiala, County Executive

Re: Executive Order/Whistle Blowers procedure

DATE: July 14, 2005

The following whistle blowers procedure should be distributed to all County employees.

The residents of the County of Broome are entitled to and demand a government committed to the highest standards of integrity, honesty, efficiency and accountability. Misconduct involving corruption, fraud, criminal activity, conflicts of interest, or abuse by County officers and employees undermines public confidence in government, and prevents government from operating honestly, efficiently and effectively.

County employees have a duty to report to the County any information concerning corruption, fraud, criminal activity, conflicts of interest, or abuse by another employee relating to his/her office or employment. New York State has a whistle blower law which protects County employees who report any instances of corruption, fraud, criminal activity, conflicts of interest, or abuse.

I, Barbara J. Fiala, County Executive of the County of Broome, by virtue of the authority vested in me by the Charter of the County of Broome and the Laws of the State of New York do hereby order as follows:

1. Every County officer or employee shall promptly report to his/her department supervisor any information concerning corruption, fraud, criminal activity, conflicts of interest, or abuse by another County officer or employee relating to his/her office or employment, or by a person having business dealings with the County.
2. If a County officer or employee has any information concerning corruption, fraud, criminal activity, conflicts of interest, or abuse by his/her supervisor, the County employee or officer shall report said information to the County Attorney.
3. The knowing or intentional failure of any County officer or employee to so report information of improper governmental action shall be cause for removal from office or employment or other appropriate penalty.

4. Any County officer or employee who acts pursuant to this County Executive Directive by reporting improper governmental action as defined in Civil Service Law '75-b shall not be subject to dismissal or other disciplinary or adverse personal action. New York State Civil Service Law '75-b provides in part as follows:

A public employer shall not dismiss or take other disciplinary or other adverse personal action against a public employee regarding the employee's employment because the employee discloses to a governmental body information: (i) Regarding a violation of law, rule or regulation which violates creates or presents a substantial and specific danger to the public health or safety; or to (ii) which the employee reasonably believes to be true and reasonably believes constitutes an improper governmental action.

5. Any supervisor who receives from an employee any information concerning corruption, fraud, criminal activity, conflicts of interest, or abuse shall immediately inform the County Attorney.

6. Whenever the County Attorney receives any information concerning corruption, fraud, criminal activity, conflicts of interest, or abuse, he/she shall investigate the matter and, if appropriate, notify the authorities, including but not limited to, the County Executive, Broome County and/or NYS Comptroller, Broome County District Attorney, NYS Attorney General and Broome County Board of Ethics.