CORPORATE COMPLIANCE/FALSE CLAIMS ACT

STATEMENT OF POLICY:
Sullivan County is committed to providing quality health care in compliance with all applicable laws, rules and regulations and other directives of federal, state and local governments and agencies.

Compliance programs under the guidance of the Office of the New York State Medicaid Inspector General and the Federal Deficit Reduction Act of 2005 are designed to promote a higher level of ethical and lawful conduct throughout the entire County government to combat health care fraud and abuse.

Sullivan County is committed to prevent and detect any fraud, waste and abuse related to Federal and State health care programs (Medicaid, Medicare and other governmental payer programs).
The County prohibits the knowing submission of a false claim for payment in relation to a Federal or State funded health care program. Such submission violates the Federal False Claims Act, the New York State False Claims Act as well as other federal and state laws and may result in significant civil and/or criminal penalties.

Sullivan County will protect any whistleblower. Sullivan County will ensure that employees and persons dealing with the County in relating to the provision of health care services do not violate any applicable law relating to the provision of such services; will develop a law-abiding atmosphere, and will discourage wrongdoing, self-dealing, detect and control misconduct.

SCOPE:
This policy applies to all County employees, contractors, medical staff, volunteers and vendors.

PROCEDURE:

1. WRITTEN POLICIES, PROCEDURES AND STANDARDS OF CONDUCT:
Appropriate County divisions and departments will develop and distribute written standards of conduct as well as updated clinical, financial and administrative policies on the provision of service that which all employees are expected to comply with. The standard of conduct is for the employee to follow all department specific policies and procedures while performing their job duties.

Divisions and Departments will develop policies and procedures addressing the non-employment or retention of excluded individuals or entities and the enforcement of appropriate disciplinary action against employees or contractors who have violated corporate

compliance policies and procedures, applicable statues, regulations, federal, state or private payor healthcare requirements.

The County encourages any employee who is aware of or reasonably suspects the preparation or submission of a false claim or report or any other potential fraud, waste or abuse related to a Federally or State funded health care program to report such information to his or her supervisor or to the County's Personnel Officer. Any employee who reports such information will have the right and opportunity to do so anonymously and will be protected against retaliation for making the report. The County commits itself to swiftly and thoroughly investigate any reasonably credible report of fraud, waste or abuse or any reasonable suspicion thereof through the County compliance program. The County retains the right to take appropriate action against an employee or vendor who has participated in a violation of any applicable law or this Policy.

2. COMPLIANCE OFFICER AND COMPLIANCE COMMITTEE:

Sullivan County's Corporate Compliance Officer is designated by the County Manager.

Departments will designate a corporate compliance officer to ensure compliance with department specific policies. Compliance issues detected will be brought to the attention of the department compliance officer.

Each department has a department head that is responsible for the day to day operations. Departments are under the overall supervision of the County Manager.

3. TRAINING AND EDUCATION:

All employees will be oriented on the first day of employment by the County Personnel Department to the County Policies and Procedures.

During the orientation process new employees will be oriented to the department specific policies and procedures. On an annual basis the departments will train employees on department policies and procedures.

Each department will adopt a process whereby employees will certify that they have received, read and will abide by department specific policies and procedures at orientation, annually and as revised and/or amended.

4. EFFECTIVE LINES OF COMMUNICATION:

Each Department's Compliance Officer will adhere to an open door policy and encourage employees to discuss any issues in regards to abuse and fraud. Employees are assured of non-retaliation and confidentiality.

5. ENFORCEMENT THROUGH DISCIPLINE:

Failure to adhere to compliance standards and department policies will result in disciplinary action up to and including termination.

6. CONDUCTING INTERNAL MONITORING AND AUDITING TO PREVENT FRAUDULENT ACTIVITIES:

Each department will develop internal monitoring and auditing systems to reduce fraud and abuse, enhance operational functions, improve the quality of health care services and decrease the cost. This is done through early detection and reporting in order to minimize loss to the government from false claims and thereby reducing Department and County exposure to civil damages and penalties, criminal sanctions and administrative remedies.

The department and/or County will thoroughly and thoughtfully investigate in a timely and appropriate manner compliance issues that are brought to their attention. Prompt response and corrective action for the detected problem as appropriate are expected.

Reports may be anonymous and confidentiality will be maintained.
To report a suspected issue of fraud or abuse the employee may report verbally, by phone or in person to the Department Compliance Officer or to the Personnel Officer.

After completion of the investigation the Department Compliance Officer will report findings to the Commissioner of Human Resources, County Manager, the Corporate Compliance Office and/or applicable law enforcement officer. Following investigation of complaints disciplinary action will be in accordance with appropriate collective bargaining agreements and/or Civil Service Law Section 75. Disciplinary action may include but is not limited to:

- Record of conference –counseling memo
- Written warning
- Letter of reprimand
- Suspension of pay - not to exceed 60 days
- Termination

FEDERAL AND STATE STATUTES RELATING TO FILING FALSE CLAIMS

The following are federal and state statutes applicable to the submission of false claims relating to any Federal or State funded health care programs:

A. FEDERAL LAWS
   1. Federal False Claims Act (31 USC §§3729-3733)

B. NEW YORK STATE LAWS - CIVIL AND ADMINISTRATIVE LAWS
   1. New York False Claims Act (State Finance Law §§187-194)
   2. Social Services Law, §145-b-False Statements
   3. Social Services Law, §145-c-Sanctions

C. NEW YORK STATE LAWS - CRIMINAL
   1. Social Services Law, §145-Penalties
   2. Social Services Law, §366-b-Penalties for Fraudulent Practices.

3. Social Services Law, §145-c-Sanctions
4. Penal Law Article 175- False Written Statements
5. Penal Law Article 176- Insurance Fraud
6. Penal Law Article 177- Health Care Fraud

D. WHISTLEBLOWER PROTECTION

1. Federal False Claims Act (31 U.S.C. §3730(h))
2. New York State False Claim Act (State Finance Law §191)
3. New York State Labor Law, §740
4. New York State Labor Law, §741
5. Sullivan County Whistle Blower Policy.

DESCRIPTION OF APPLICABLE LAWS

Federal False Claims Act (31 USC §§3729-3733)

The False claims Act ("FCA") provides, in pertinent parts, as follows:

Liability for certain acts:

1) In general – subject to paragraph (2), any person who:

(A) Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;

(B) Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim:

(C) Conspires to commit a violation of subparagraph (A), (B), (D), (E), (F) or (G);

(D) Has possession, custody, or control of property or money used, or to be used, by the Government and knowingly delivers, or causes to be delivered, less than all of that money or property;

(E) Is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(F) Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully many not sell or pledge property; or

(G) Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government, is liable to the United States government for a civil penalty of not less than $5,000 and not more than $10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461) note: Public Law 104-410, plus 3 times the amount of damages which the Government sustains because of the act of that person.

2) Reduced damages – if the court finds that:

(A) the person committing the violation of this subsection furnished officials of the United States responsible for investigating false claims violations with all

information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;

(B) such person fully cooperated with any Government investigation of such violation; and

(C) at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation and the person did not have actual knowledge of the existence of an investigation into such violation, the court may assess not less than 2 times the amount of damages which the Government sustains because of the act of that person.

3)Costs of civil actions - a person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages.

Definitions – for purposes of this section:

1. The terms "knowing" and "knowingly"- Means that a person, with respect to information:

(i) has actual knowledge of the information;

(ii) acts in deliberate ignorance of the truth or falsity of the information; or

(iii) acts in reckless disregard of the truth or falsity of the information; and

Require no proof of specific intent to defraud.

2. The term "**claim**" means any request or demand, whether under a contract or otherwise, for money or property and whether or not the United States has title to the money or property, that:

(i) is presented to an officer, employee, or agent of the United States; or

(ii) is made to a contractor, grantee, or other recipient, if the money or property is to be spent or sued on the Government's behalf or to advance a Government program or interest, and if the United States Government:

a. provides or has provided any portion of the money or property requested or demanded; or
b. will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded; and
c. does not include requests or demands for money or property that the Government has paid to an individual as compensation for Federal employment or as an income subsidy with no restrictions on that individual's use of the money or property;

3. The term "**obligation**" means an establish duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment; and
4. The term "**material**" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

Exemption from disclosure - any information furnished pursuant to subsection (a) 2 shall be exempt from disclosure under section 552 of title 5.
Exclusion - this section does not apply to claims, records, or statements made under the Internal Revenue Code of 1986.

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

In sum, the False Claims Act imposes liability on any person who submits a claim to the federal government, or submits a claim to entities administering government funds that he or she knows (or should know) is false. An example may be a physician who submits a bill to Medicare for medical services she knows she has not provided. The False Claims Act also imposes liability on an individual who may knowingly submit a false record in order to obtain payment form the government.

An example of this may include a government contractor who submits records that he knows (or should know are false and that indicate compliance with certain contractual or regulatory requirements. The third area of liability includes those instances in which someone may obtain money from the federal government to which he may not be entitled, and then uses false statements or records in order to retain the money. An example of this so-called "reverse false claim" may include a hospital which obtains interim payments from Medicare or Medicaid through the year, and then knowingly files a false cost report at the end of the year in order to avoid making a refund to the Medicare or Medicaid program.

In addition to its substantive provisions, the FCA provides that private parties may bring an action on behalf of the United States. 31 U.S.C. 3730 (b). These private parties, known as "qui tam relators," may share in a percentage of the proceeds from an FCA action or settlement.
Section 3730(d)91) of the FCA provides, with some exceptions, that a qui tam relator, when the Government has intervened in the lawsuit, shall receive at least 15 percent but not more than 25 percent of the proceeds of the FCA action depending upon the extent to which the relator substantially contributed to the prosecution of the action. When the Government does not intervene, section 3730(d0920 provides that the relator shall receive an amount that the court decides is reasonable and shall be not less than 25 percent and not more than 30 percent.

Administrative Remedies for False Claims (31 U.S.C. Chapter 38. §§3801-3812)

This statute allows for administrative recoveries by federal agencies. If a person submits a claim that the person knows is false or contains false information, or omits material

information, the agency receiving the claim may impose a penalty of up to $5,000 for each claim. The agency may also recover twice the amount of the claim.

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

NEW YORK STATE LAWS

New York State False Claim Laws fall under the jurisdiction of both New York's civil and administrative laws as well as its criminal laws. Some apply to recipient false claims and some apply to provider false claims. The majority of these statutes are specific to health care or Medicaid. Yet some of the "common law" crimes apply to areas of interaction with the government and so are applicable to health care frauds and will be listed in this section.

A. CIVIL AND ADMINISTRATIVE LAWS

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

The New York False Claims Act is similar to the Federal False Claims Act. It imposes penalties and fines upon individuals and entities who knowingly file false or fraudulent claims for payment from any state or local government, including health care programs such as Medicaid. It also has a provision regarding reverse false claims similar to the federal FCA such that a person or entity will be liable in those instances in which the person obtains money from a state or local government to which they may not be entitled, and then uses false statements or records in order to retain the money.

The penalty for filing a false claim is six to twelve thousand dollars per claim plus three time the amount of the damages which the state or local government sustains because of the act of that person. In addition, a person who violates this act is liable for costs, including attorneys' fees, of a civil action brought to recover any such penalty.

The Act allows private individuals to file lawsuits in state court, just as if they were state or local government parties, subject to various possible limitations imposed by NYS Attorney General or a local government. If the suit eventually concludes with payments back to the government, the person who started the case can recover twenty- five to thirty percent of the proceeds if the government did not participate in the suit, or fifteen to twenty five percent if the government did participate in the suit.

2) Social Services Law, Section 145-b -False Statements

It is a violation to knowingly obtain or attempt to obtain payment for items or services furnished under any Social Services program, including Medicaid, by use of a false statement, deliberate concealment or other fraudulent scheme or device. The state or the local Social Services district may recover three times the amount incorrectly paid. In addition, the Department of Health may impose a civil penalty of up to ten thousand dollars per violation. If repeat violations occur within five years; a penalty of up to thirty thousand

dollars per violation may be imposed if the repeat violations involve more serious violations of Medicaid rules, billing for services not rendered, or providing excessive services.

3) Social Services Law, Section 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 needs of the individual or that of his family shall not be taken into account for the purpose of determining his or her needs or that of his family for six months if a first offense, for twelve months if a second offence (or if benefits wrongfully received are at least one thousand dollars but not more than three thousand nine hundred dollars), for eighteen months if a third offense (or if benefits wrongfully received are in excess of three thousand nine hundred dollars), and five years for any subsequent occasion of any such offense.

B. CRIMINAL LAWS

1) Social Services Law, Section 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.

2) Social Services Law, Section 366-b- Penalties for Fraudulent Practices

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

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

3) Penal Law Article 155 –Larceny

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

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

4) Penal Law Article 175- False Written Statements

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

a. §175.05 -Falsifying business records involves entering false information, omitting material information or altering an enterprise's business records with the intent to defraud. It is a class A misdemeanor.

b. §l75.10 -Falsifying business records in the first degree includes the elements of the §175.05 offense and includes the intent to commit another crime or conceal its commission. It is a class E felony.

c. §175.30 – Offering a false instrument for filing in the second degree involves presenting a written instrument, including a claim for payment, to a public office knowing that it contains false information. It is a class A misdemeanor.

d. §175.35 - Offering a false instrument for filing in the first degree includes the elements of the second degree offense and must include an intent to defraud the state or political subdivision. It is a class E felony.

5) Penal Law Article 176 - Insurance Fraud

a. This law applies to claims for insurance payments, including Medicaid or other health insurance, and contains six crimes:
b. Insurance Fraud in the 5th degree involves intentionally filing a health insurance claim knowing that it is false. It is a class A misdemeanor.
c. Insurance fraud in the 4th degree is filing a false insurance claim for over $1,000. It is class E felony.
d. Insurance fraud in the 3rd degree is filing a false insurance claim for over $3,000. It is a class D felony.
e. Insurance fraud in the 2nd degree is filing a false insurance claim for over $50,000. It is a class C felony.
f. Insurance fraud in the 1st degree is filing a false insurance claim for over $1 million. It is a class B felony.
g. Aggravated insurance fraud is committing insurance fraud more than once. It is a class D felony.

6) Penal Law Article 177 – Health Care Fraud

This statute, enacted in 2006, applies to health care fraud crimes. It was designed to address the specific conduct by health care providers who defraud the system including any publicly or privately funded health insurance or managed care plan or contract, under which any health care item or service is provided. Medicaid is considered to be a single health plan under this statute. This law primarily applies to claims by providers for insurance payment, including Medicaid payment, and it includes six crimes.

a. Health care fraud in the 5th degree- a person is guilty of this crime when, with intent to defraud a health plan, he or she knowingly and willfully provides materially false information or omits material information for the purpose of requesting payment from a health plan. This is a class A misdemeanor.
b. Health care fraud in the 4th degree – a person is guilty of this crime upon filing such false claims on more than one occasion and annually receives more than three thousand dollars. This is a class E felony.
c. Health care fraud in the 3rd degree – a person is guilty of this crime upon filing such

false claims on more than one occasion and annually receives more than ten thousand dollars. This is a class D felony.

d. Health care fraud in the 2nd degree –a person is guilty of this crime upon filing such false claims on more than one occasion and annually receives more than fifty thousand dollars. This is a class C felony.
e. Health care fraud in the 4th degree –a person is guilty of this crime upon filing such false claims on more than one occasion and annually receives over one million dollars. This is a class B felony.

WHISTLEBLOWER PROTECTION

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

The Federal False Claims Act provides protection to qui tam relators (individuals who commence a False Claims action) who are discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of their employment as a result of their furtherance of an action under the FCA. 31 U.S.C. 3730 (h).

Remedies include reinstatement with comparable seniority as the qui tam relator would have had but for the discrimination, two times the amount of any back pay, interest on any back pay and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

2) New York State False Claim Act (State Finance Law §191)

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

3) New York State Labor Law, Section 740

An employer may not take any retaliatory action against an employee if the employee discloses information about the employer's policies, practices or activities to a regulatory, law enforcement or other similar agency or public official. Protected disclosures are those that assert that the employer is in violation of a law that creates a substantial and specific danger to the public health and safety or which constitutes health care frauds under Penal Law *§* 177 (knowingly filing with intent to defraud, a claim for payment that intentionally has false information or omissions). The employee's disclosure is

protected only if the employee first brought up the matter with a supervisor and gave the employer a reasonable opportunity to correct the alleged violation. If an employer takes a retaliatory action against the employee, the employee may sue in state court for reinstatement to the same, or an equivalent position, any lost back wages and benefits and attorney's fees. If the employer is a health provider and the court finds that the employer's retaliatory action was in bad faith, it may impose a civil penalty of $10,000 on the employer.

4) New York State Labor Law, Section 741

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