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Pursuant to the Deficit Reduction Act of 2005 we are supplying you with information regarding Rome Memorial Hospital's Corporate Compliance program and Federal and State Laws.

Rome Memorial Hospital is committed to preventing and detecting healthcare fraud, waste and abuse. The Hospital has a reputation, achieved and maintained through the integrity and ethical standards of our employees and medical staff, for conducting ourselves in accordance with the highest levels of ethical business conduct and in compliance with applicable laws and regulations. In an effort to support this reputation, Rome Memorial Hospital has a Corporate Compliance Program in place which allows the organization to maintain our organizational ethics and business conduct practices. The Compliance Program empowers employees and medical staff to detect any problems and provides a means to solve those problems. It is critical that each employee or agent understand his or her individual responsibility to not only personally adhere to these standards, but also actively participate and promote compliance as representatives of the Hospital.

Some of the elements in Rome Memorial Hospital's Corporate Compliance Program include:

- A Compliance Officer and a Compliance Manager who are responsible for the day-to-day operations of the Compliance Program.
- Written standards of conduct, as well as written policies and procedures that describe compliance expectations and promote the Hospital's commitment to compliance for all Hospital employees and members of the Medical Staff.
- A Corporate Compliance Committee that is charged with the responsibility of operating and monitoring the program, as well as initiating actions to correct any problems encountered.
- Regular, effective education and training programs for all employees whose job descriptions could involve situations where violations of the law could arise.
- Procedures to encourage employees to bring to management's attention any situations that may be violations of a law without fear of threats or punishment.
- A system that allows for confidential and anonymous reporting of compliance issues or concerns.
- A system to respond to allegations of improper or illegal activities and the enforcement of appropriate disciplinary action against employees who have violated the Corporate Compliance policies.
- Audits and/or other evaluation techniques to monitor compliance and assist in the reduction of identified problem areas.

If you should have a question or concern while conducting business with Rome Memorial Hospital, you should feel comfortable bringing your concerns forward. We encourage you to share your concerns with the Director or Manager that you are working with; however, you may also contact Basil Ariglio, Compliance Officer at 315-338-7020 or Lucy Rizzo, Compliance Manager at (315) 338-7221 or by email at Lrizzo@romehospital.org. Rome Memorial Hospital also has a Compliance Hotline which allows callers to report concerns anonymously and without fear of retribution. The Compliance Hotline number is (315) 338-7625.

The following laws relating to filing false claims are critical to the Hospital Corporate Compliance Program and it is crucial that all employees, medical staff and agents understand these laws.

I. Federal and New York State Health Care Fraud and Abuse Laws.

Both the federal and New York state governments fund health care programs that provide health benefits to qualified beneficiaries. Examples of such government health care programs include, but are not limited to, Medicare and Medicaid. To avoid waste, fraud and abuse in said programs, there are Federal and State laws designed to deter fraud and abuse some of which will be described below.

a. Federal False Claims Act, 31 UCS §§3729-3733.

The Federal False Claims Act imposes penalties and fines on individuals and entities that knowingly file false or fraudulent claims for payment from Medicare, Medicaid or other federal health programs. The penalty for filing a false claim is \$5,000 - \$10,000 per claim and the recoverable damages are between two and three times the value of the amount falsely received. In addition, the false claim filer may have to pay the government's legal fees.

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c. Administrative Remedies for False Claims, 31 UCS 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, then the agency receiving the claim may impose a penalty of up to \$5,000 for each claim. The agency may also recover twice the amount of the claim.

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

d. Qui Tam Lawsuits.

Both the Federal and New York State False Claims Act provide for *qui tam* lawsuits through which any person (the “qui tam relator”) may bring a civil action for himself or herself and on behalf of the US Government for any violation of the False Claims Act. If the qui tam relator ultimately wins the lawsuit or if there is a settlement of the lawsuit, he or she may share in a portion of any money recovered with the government and receive reimbursement for reasonable expenses, reasonable attorneys’ fees and costs. Please note recovery by the qui tam relator is uncertain and dependent upon the facts and circumstances of the case.

II. New York State Laws

New York false claims laws fall into two categories; administrative and civil laws; and criminal laws. Many of them overlap. Some apply to recipient false claims and some apply to provider false claims, and while most are specific to healthcare or Medicaid, some of the “common law” crimes apply to all walks of life.

A. CIVIL AND ADMINISTRATIVE LAWS

1. New York State False Claims Act, State Finance Law, Article 13.

The New York State False Claims Act is very similar to the Federal False Claims Act. It prohibits the filing of a false claim. The filing of a false claim is defined as knowingly presenting a false or fraudulent claim for payment or approval, making a false statement to get a claim paid or conspiring to defraud the state by getting a false claim paid. A person who violates the NYS false claims act will be liable for a civil penalty of between \$6,000 and \$12,000 plus three times the amount of damages sustained by the state or local government. The amount of damages may be reduced if the violator self discloses the violation.

The Act allows private individuals to file lawsuits in state court, just as if they were state or local government parties. If the suit eventually concludes with payments back to the government, the person who started the case can recover 25-30% of the proceeds if the government did not participate in the suit or 15-25% if the government did participate in the suit.

(For the purposes of this section, the term “knowingly” means that a person, with respect to information (1) has actual knowledge of the information; (2) acts in deliberate ignorance of the truth or falsity of the information; or (3) acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.)

2. Social Services Law §145-c: If any person applies for or receives public assistance, including Medicaid, by intentionally making a false or misleading statement, or intending to do so, for the purpose of establishing or maintaining eligibility, increasing benefits or preventing a decrease, shall not have his or her needs taken into account for the following periods of time: 6 months if a first offense, 12 months if a second (or once if benefits received are over \$3,900) and five years for subsequent offenses.

3. Social Services Law §145-b False Statements: It is a violation to knowingly obtain or attempt to obtain payment for items or services furnished under any Social Services program, including Medicaid, by use of a false statement, deliberate concealment or other fraudulent scheme or device.

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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 \$2,000 per violation. If repeat violations occur within 5 years, a penalty up to \$7,500 per violation may be imposed if they involve more serious violations of Medicaid rules, billing for services not rendered or providing excessive services.

B. CRIMINAL LAWS

1. Social Services Law § 145, Penalties: Any person who submits false statements or deliberately conceals material information in order to receive public assistance, including Medicaid, is guilty of a misdemeanor.

2. Social Services Law § 366-b, Penalties for Fraudulent Practices:

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

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

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. It has been applied to Medicaid Fraud cases.

-Grand larceny can range from the Fourth degree to the First degree depending on the range of property valued at \$1,000 to over \$1 million and ranges from a Class E felony to 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. §175.10, Falsifying business records in the first degree includes the elements of the §175.05 offense and includes the intent to commit another crime or conceal its commission. It is a Class E felony.

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

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

5. Penal Law Article 176, Insurance Fraud, applies to claims for insurance payment, including Medicaid or other health insurance and contains six crimes, ranging from a Class B to a Class D felony. It involves intentionally filing a health insurance claim knowing that it is false.

6. Penal Law Article 177, Health Care Fraud, applies to claims for health insurance payment, including Medicaid, and contains five crimes, it is knowingly filing, with intent to defraud, a claim for payment that intentionally has false information or omissions.

III. EMPLOYEE WHISTLEBLOWER PROTECTION RIGHTS

1. New York Labor Law §740 An employer may not take any retaliatory action against an employee if the employee discloses information about the employer's policies, practices or activities to a regulatory, law enforcement or other similar agency or public official. Protected disclosures are those that assert that the employer is in violation of a law that creates a substantial and specific danger to the public health and safety. The employee's disclosure is protected only if the employee first brought up the matter with a supervisor and gave the employer a

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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 equivalent position and any lost back wages, 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.

- 2. New York Labor Law §741** A health care employer may not take any retaliatory action against an employee if the employee discloses certain information about the employer's policies, practices or activities to a regulatory, law enforcement or other similar agency or public official. Protected disclosures are those that assert that, in good faith, the employee's beliefs 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.
 - a. **Hospital's Non-Retaliation Policy.** As set forth in greater detail below, the False Claims Act forbids retaliation by an employer against an employee who cooperates with investigators regarding potential False Claims Act violations or who commences qui tam actions in good faith. In accordance with such laws and its Corporate Compliance Program, Rome Memorial Hospital fully complies with all applicable "whistle-blower" protections.
 - b. **Specific False Claims Act Protection (Federal False Claims Act (31 U.S.C. §3730(h))** The False Claims Act specifically provides that any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employer or others in furtherance of an action under the False Claims Act, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under the False Claims Act, shall be entitled to all relief necessary to make the employee whole. Such relief may include reinstatement with the same seniority status the employee would have enjoyed but for the discrimination; two times the amount of back pay; interest on back pay; and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. The New York State False Claims Act has similar non-retaliation protections.