



THE WESLEY COMMUNITY

WESLEY HEALTH CARE CENTER

131 Lawrence Street
Saratoga Springs, NY 12866



Corporate Compliance and Ethics Program

TABLE OF CONTENTS

TABLE OF CONTENTS.....	2
INTRODUCTION.....	4
POLICY STATEMENT.....	5
ELEMENTS OF PROGRAM.....	6
WRITTEN POLICIES, PROCEDURES, AND STANDARDS OF CONDUCT AND ETHICS.....	7
A. Resident Care and Resident Rights.....	7
B. Referrals.....	8
C. Billing and Claims; Cost Reports.....	10
D. Non-Discrimination in Resident Services and Charges.....	12
E. Confidentiality.....	13
F. Business Entertainment or Gifts.....	13
G. Conflicts of Interest.....	14
H. Governance.....	15
I. Credentialing.....	16
J. 42 U.S.C. 1396-a(a)(68).....	16
COMPLIANCE LEADERSHIP AND OVERSIGHT.....	17
A. Current Director of Corporate Compliance.....	17
B. Responsibilities of the Director of Corporate Compliance.....	17
C. Director of Corporate Compliance: Program Oversight.....	18
D. The Compliance and Ethics Committee (CEC).....	19
E. Current Members of the Compliance and Ethics Committee.....	19
F. Responsibilities of the Compliance and Ethics Committee.....	19
G. Board of Directors and Compliance Oversight.....	20
TRAINING AND EDUCATION.....	21
A. Initial and Annual Training.....	21
B. Annual Training Plan.....	22
C. Periodic Targeted Training.....	22
D. Periodic Targeted Training for the Board of Directors.....	22
E. Accessibility of Training Materials.....	23
F. Failure to Attend Required Training.....	23
G. Ongoing Communication and Changes in Compliance & Ethics Program.....	23
H. Communication with Wesley Contractors.....	24
COMMUNICATION WITH THE DIRECTOR OF COMPLIANCE & DISCLOSURE PROGRAM.....	24
A. Reporting.....	24
B. Examples of Activities to be Reported.....	25
C. Confidentiality.....	25
D. Non-Retaliation and Non-Intimidation.....	26
ENFORCING STANDARDS: CONSEQUENCES AND INCENTIVES.....	26
A. Consequences.....	26
B. Incentives.....	27
RISK MANAGEMENT, AUDITING, AND MONITORING.....	28
A. Risk Assessment.....	28
B. Compliance and Ethics Committee Role in Risk Assessment.....	29
C. Auditing, Monitoring, and the Compliance & Ethics Work Plan.....	29

RESPONDING TO DETECTED OFFENSES & DEVELOPING CORRECTIVE ACTION INITIATIVES..	31
A. Investigations of Violations.....	32
B. Corrective Actions and Reporting	32
APPENDIX A – FEDERAL & STATE FALSE CLAIMS LAWS & WHISTLEBLOWER PROTECTION.....	34
Federal False Claims and Penalties.....	34
Civil Actions under the Act.....	35
31 U.S.C. §3801 et. seq.....	36
NY State Finance Law §§187-194	39
Social Services Law, Section 366-b.....	39
Article 177 of the Penal Law	39
18 NYCRR Section 515.2	40
Whistleblower Protections	40
NY State Laws	41
APPENDIX B – ANTI-KICKBACK STATUTE.....	44
APPENDIX C – PHYSICIAN SELF-REFERRAL LAW (STARK STATUTE).....	46
APPENDIX D – REPORT OF POTENTIAL NON-COMPLIANCE FORM.....	47
APPENDIX E – THE CORPORATE COMPLIANCE AND ETHICS PROGRAM CHARTER.....	48
APPENDIX F – THE WESLEY COMMUNITY’S CORE VALUES PROGRAM.....	52
APPENDIX G – COMPLIANCE & ETHICS CERTIFICATION	53

INTRODUCTION

In alignment with the Core Values that guide our work and spirit of service, The Wesley Community is dedicated and committed to meeting high ethical standards and compliance with all applicable laws in all activities regarding the operation of The Wesley Community. This commitment and dedication are essential to The Wesley Community meeting its mission and is critically important because a significant portion of The Wesley Community's services are reimbursed through governmental programs which require that The Wesley Community's business be conducted with complete integrity. This Compliance and Ethics Program (the "Program") reflects commitment to quality of care on the part of The Wesley Community.

As used in this document, the term "Wesley Individuals" refers to all volunteers, employees, senior managers, chief executives, the governing body members of The Wesley Community facilities, and any individual who owns at least 5 percent interest in a The Wesley Community facility. The term "Wesley Contractor" refers to independent contractors, contractors, subcontractors, agents, vendors, or others who provide services to The Wesley Community or its facilities. Wesley Individuals and Wesley Contractors are collectively referred to as "Affected Individuals".

The Program is applicable to many critical areas and activities, including billing, payments, medical necessity and quality of care, governance, mandatory reporting, and credentialing. For example, implementation of the Program enhances quality of care by facilitating adherence to regulatory standards. Additional purposes of the Program include organizing The Wesley Community resources to resolve compliance issues as quickly and efficiently as possible. In compliance with §6032 of the Deficit Reduction Act of 2005 ("DRA"), this Program also documents The Wesley Community's policies and procedures for detecting and preventing fraud, waste, and abuse in federal health care programs.

This Program, with Standards of Conduct and Ethics at its core, encompasses the compliance program components mandated by NY Social Services Law § 363-d(2) as well as regulations promulgated by the New York State Office of the Medicaid Inspector General ("OMIG"), found in Part 521 of Title 18 of the New York Code of Rules and Regulations ("NYCRR"). In addition, the Program reflects compliance program recommendations issued by the United States Department of Health and Human Services, Office of Inspector General ("OIG") in its Compliance Program Guidance for Nursing Facilities, as published in November 2023. The Program also reflects consideration of authoritative guidance as to best practices and effectiveness review.

Although it is modeled in conformity with the New York State statute and regulations, OMIG publications, and OIG Guidance, this Program is specifically tailored to The Wesley Community. It is designed to meet the internal needs and specific risks particular to The Wesley Community, and it considers characteristics of The Wesley Community such as culture, size, structure, clinical setting, and operational processes.

Many aspects of the Program, including portions of the Standards of Conduct, have been in effect since before the inception of a formal compliance program, and have been modified over time as operational and compliance requirements have evolved. Existing policies, procedures, and standards have been reviewed, revised, and brought under the umbrella of a coordinated Compliance and Ethics Program.

The Program will be amended and supplemented from time to time to conform to changes in laws, regulations, guidance, and best practices. **Adherence to the Program is a condition of employment for all employees of The Wesley Community.**

POLICY STATEMENT

It is the policy of The Wesley Community to provide services in compliance with all state and federal laws governing its operation and consistent with the highest standards of business and professional ethics. This Program is a solemn commitment to our residents, our community, to those governmental agencies that regulate The Wesley Community, and to us.

All Affected Individuals must carry out their duties for The Wesley Community in accordance with this policy. To assist Affected Individuals with their obligation to comply with this policy, this Program includes standards of conduct and ethical standards in several specific areas. Conduct that does not comply with these standards is not authorized by The Wesley Community and is outside the scope of employment or professional staff membership at The Wesley Community.

Any violation of applicable law, the standards contained in this Program, or deviation from appropriate ethical standards, will subject an Affected Individual to disciplinary action, which may include oral or written warning, disciplinary probation, suspension, demotion, dismissal from employment, or revocation of privileges. These disciplinary actions also may apply to an employee's supervisor who directs or approves the employee's improper actions or is aware of those actions but does not act appropriately to correct them or who otherwise fails to exercise appropriate supervision.

If, at any time, an Affected Individual becomes aware of any apparent violation of The Wesley Community's policies, he or she must report it in accordance with the reporting requirements of this Program. All persons making such reports are assured that such reports will be treated as confidential to the extent permissible and that such reports will be shared only on a bona fide need to know basis. The Wesley Community will take no adverse action against persons making such reports in good faith and without malicious intent whether or not the report ultimately proves to be well founded. In addition, The Wesley Community will not tolerate retaliation of any person who reports a violation by another person. If an Affected Individual does not report conduct violating The Wesley Community's policies, the Affected Individual may be subject to disciplinary action up to and including termination of employment or revocation of privileges.

The laws affecting the operation of The Wesley Community's activities are complex and many. In addition, this Program, addresses, in general terms, only several of the more important legal and ethical principles affecting The Wesley Community's activities. Their mention in this Program is not intended to minimize the importance of other applicable laws, professional standards, or ethical principles. It is not expected that each employee will be fully versed in all laws of permissible activities involved in their work. Therefore, if an employee has a question regarding the legality or propriety of a course of action, the employee should seek guidance from his or her supervisor or from the Director of Corporate Compliance before taking any action.

ELEMENTS OF THE COMPLIANCE AND ETHICS PROGRAM

The Program has seven core elements, which are structured according to the requirements set forth in NY Social Services Law § 363-d(2) and include:

1. Written policies, procedures, and standards of conduct & ethics that:
 - 1.1. Articulate the organization's commitment to comply with all applicable federal and state standards;
 - 1.2. Describe compliance expectations (as embodied in the Standards of Conduct and Ethics);
 - 1.3. Implement the operation of the Compliance and Ethics Program;
 - 1.4. Provide guidance to employees and others on dealing with potential compliance issues;
 - 1.5. Identify how to communicate compliance issues to appropriate compliance personnel;
 - 1.6. Describe how potential compliance issues are investigated and resolved by the organization;
 - 1.7. Include a policy of non-intimidation and non-retaliation for good faith participation in the Compliance and Ethics Program, including but not limited to reporting potential issues, investigating issues, conducting self-evaluations, audits and remedial actions, and reporting to appropriate officials; and
 - 1.8. Identify and address all requirements listed under 42 U.S.C.1396-a(a)(68).
2. Designation of a Director of Corporate Compliance and a Compliance and Ethics Committee who report directly and are accountable to the organization's chief executive or governing body members.
3. Establishment and implementation of effective training and education for the Director of Corporate Compliance and organization employees, the chief executive and other senior administrators, managers and governing body members (with training and education to occur at least once each year and is made a part of the orientation for all new employees, chief executives, managers, or governing body members).
4. Establishment and implementation of effective lines of communication, ensuring confidentiality, between the Director of Corporate Compliance, members of the Compliance and Ethics Committee, the organization's employees, managers and governing body, and the organizations first tier, downstream, and related entities (with such lines of communication being accessible to all and allowing compliance issues to be reported, including a method for anonymous and confidential good faith reporting of potential compliance issues as they are identified).

5. Well-publicized disciplinary standards and incentives through the implementation of procedures which encourage good faith participation in the Compliance and Ethics Program by all Affected Individuals.
6. Establishment and implementation of an effective system for risk assessment, as well as routine audits and continuous monitoring of potential compliance risks. The system should include internal monitoring and audits and, as appropriate, external audits, to evaluate the organization's compliance with the medical assistance program requirements and the overall effectiveness of the Compliance and Ethics Program.
7. Establishment and implementation of procedures and a system for:
 - 7.1. Promptly responding to detected offenses as they arise;
 - 7.2. Investigating potential compliance problems as identified in the course of self-evaluations and audits;
 - 7.3. Correcting such problems promptly and thoroughly to reduce the potential for recurrence; and
 - 7.4. Ensuring ongoing compliance with the medical assistance programs requirements.

WRITTEN POLICIES, PROCEDURES, AND STANDARDS OF CONDUCT & ETHICS

A. Resident Quality of Care and Resident Rights

It is The Wesley Community's policy to provide a high quality of care to its residents. Each resident will receive services in accordance with a comprehensive plan of care developed by an interdisciplinary care team based on periodic comprehensive assessments of the resident's condition. Each plan of care is designed to ensure that The Wesley Community provides the necessary care and services to attain or maintain a resident's highest practicable physical, mental, and psychosocial well-being.

Each resident is entitled to a dignified existence, self-determination, and the provision of care and services in an environment that promotes the maintenance or enhancement of a resident's quality of life. It is The Wesley Community's policy to protect, promote, and foster for each resident his/her rights as a resident of The Wesley Community.

The Wesley Community has developed policies and procedures to ensure quality of care and the protection and promotion of resident rights, which are to be adhered to by The Wesley Community's staff. It is not the intent of this Program to set forth all such policies and procedures but to identify several of the more significant ones which include:

1. Comprehensive assessments for each resident will be conducted in accordance with applicable federal and state laws and regulations;

2. All resident plans of care will be developed by an interdisciplinary care team based upon the periodic comprehensive assessment of the resident's condition which shall include measurable objectives and timetables to meet the resident's medical, nursing, mental, and psychosocial needs;
3. All services and care required by a resident's plan of care will be provided to the resident by qualified staff;
4. Residents are free from verbal, mental, sexual, or physical abuse, corporal punishment, involuntary seclusion, exploitation, and misappropriation.

Wesley Health Care Center's policies and procedures regarding resident rights and resident care are available from the Director of Corporate Compliance, Director of Assisted Living, or the Director of Independent Living.

B. Referrals

Federal and state laws prohibit The Wesley Community and its employees from (1) soliciting or accepting or (2) offering or paying remuneration in exchange for referrals of patients eligible for Medicare, Medicaid, or another federal health care program. Federal and state laws also prohibit (1) the offering or payment or (2) the soliciting or receipt of remuneration in return for directly purchasing, leasing, ordering, or recommending the purchase, lease or ordering of any goods, facilities, services, or items covered under the benefits of Medicare, Medicaid, or other federal health programs. The term "remuneration" broadly covers the transferring of anything of value in any form or manner whatsoever. Remuneration is **not** limited to bribes, kickbacks, and rebates. These federal and state laws are broadly written to prohibit The Wesley Community and its employees from knowingly and willfully offering, paying, asking, or receiving any money or other benefit, directly or indirectly, overtly or covertly, in cash or in kind. These laws are violated even if only one purpose of a payment arrangement is to influence referrals or the procuring of goods or services.

There are many transactions that may violate these laws. It is impossible to list every potential violation of these laws. For your benefit, the following examples are illustrative of prohibitive activity under these laws:

1. Receiving free goods or services from a vendor in exchange for the purchase of other goods and services;
2. The routine waiver of co-insurance payments and deductibles;
3. The offering or making of gifts, loans, rebates, services, or payments of any kind to an individual or entity that is an actual or prospective referral source;
4. Entering into a professional service, management service, or consulting service agreement where payment is based on other than fair market value or is based on the volume of referrals, i.e., percentage of revenue generated.

Federal regulations known as the "Safe Harbor" regulations provide that certain payment practices will not violate these laws if the regulatory requirements for such payment practices are adhered to. The "Safe Harbor" regulations are intended to help providers protect against abusive payment practices while permitting legitimate ones. If an arrangement fits within a "Safe Harbor" it will not create a risk of criminal penalties and exclusion from the Medicare, Medicaid, or other federal

health care programs. "Safe Harbor" protection is available for certain payment practices including but not limited to the following:

1. Investment interest;
2. Space rental;
3. Equipment rental;
4. Personal service and management contracts;
5. Sale of practice;
6. Referral services;
7. Warranties;
8. Discounts;
9. Payments to employees;
10. Group purchasing organizations;
11. Certain waivers of beneficiary co-insurance and deductible amounts by hospital;
12. Increased coverage, reduced cost sharing amounts, or reduced premium amounts offered by health plans;
13. Price reductions offered to health plans;
14. Value-based arrangements;
15. Cybersecurity technology and services;
16. Patient engagement and support.

Analysis of payment practices under these laws and the "Safe Harbor" regulations is complex and depends on the specific facts and circumstances of each transaction. Employees should not make unilateral judgments on the availability of a "Safe Harbor" for a payment practice, investment, discount, or other arrangement. These situations should be brought to the attention of the Director of Corporate Compliance for review with legal counsel.

As a result of the foregoing, all contracts and arrangements with actual or potential referral sources, and all contracts and arrangements with vendors, must comply with applicable state and federal laws and regulations. All personal service, management service, and consulting service agreements must comply with applicable state and federal laws and regulations. Moreover, any other financial or other business arrangement between The Wesley Community and other health care professionals or providers must be structured to comply with all applicable state and federal laws and regulations.

If questions arise regarding whether a proposed business arrangement, financial arrangement, or contract is compliant with federal or state law, an employee is required to seek guidance from the Director of Corporate Compliance who in turn may seek appropriate guidance from legal counsel.

C. Billing and Claims; Cost Reports

Wesley Health Care Center has an obligation to its residents, third party payors, and the state and federal government to exercise diligence, care, and integrity when submitting claims for payment. The right to bill the Medicare and Medicaid programs carries a responsibility that may not be abused. Wesley Health Care Center is committed to maintaining the accuracy of every claim it processes and submits. Many employees have responsibility for entering charges and procedure codes. Each of these individuals is expected to monitor compliance with applicable billing rules. Any false, inaccurate, or questionable claims should be reported immediately to the employee's supervisor or the Director of Corporate Compliance.

False billing is a serious offense. Medicare and Medicaid rules prohibit knowingly and willfully making or causing to be made any false statement or representation of the material fact in an application for benefits or payment. It is also unlawful to conceal or fail to disclose the occurrence of an event affecting the right to payment with the intent to secure payment that is not due. Examples of false claims include:

1. Claiming reimbursement for services that have not been rendered;
2. Filing duplicate claims;
3. "Upcoding" a resident's condition to a higher RUGs category / PDPM;
4. Including inappropriate or inaccurate costs on cost reports to be submitted under the Medicare or Medicaid programs;
5. Billing for services or items that are not medically necessary;
6. Failing to provide medically necessary services or items;
7. Billing excessive charges.

With respect to the submission of claims to the Medicare or Medicaid program, it is Wesley Health Care Center's policy that claims must: (1) be accurate and timely submitted; and (2) be only for items or services that (a) are medically necessary, (b) fall within the coverage guidelines contained in applicable laws, rules and regulations, and (c) are documented in the resident's medical record. In this regard:

1. Prior to submitting a claim for payment, it is necessary to verify that all documentation for services reflected on the claim, such as physician orders and certificates of medical necessity, are available in a proper and timely manner;
2. Claims may only be submitted when appropriate documentation supports the claim and only when such documentation is maintained and available for audit and review;
3. Documentation which serves as the basis for a claim must be appropriately organized in legible form so that such documentation may be audited and reviewed;
4. Diagnosis and procedures reported on reimbursement claims must be based on the medical record and other documentation;

5. Documentation necessary for accurate code assignment must be made available to all employees with coding responsibility; and
6. Compensation for billing department coders and billing consultants shall not provide for any financial incentive to improperly upcode claims.

Regarding the filing of cost reports, it is Wesley Health Care Center's policy that all Medicare and Medicaid cost reports must be prepared utilizing generally accepted accounting principles based upon documents and reports that are maintained in The Wesley Community's day-to-day business. Cost reports must document only those costs which Wesley Health Care Center's employees and/or agents believe in good faith are allowable. Employees and agents must provide accurate and complete documentation and reports to the business office in connection with the preparation of cost reports.

Regarding claim submissions and cost reporting, the following conduct is specifically prohibited:

1. Claims for payment or reimbursement of any kind that are false, fraudulent, inaccurate, or fictitious;
2. Falsified medical records, timecards, or other records used as the basis for submitting claims;
3. For services that must be coded, use of a code that does not accurately describe the documented service when there is a more accurate code that could have been used. This includes post-dating orders or signatures. Late entries should include an explanation of reason for delay in entry;
4. Bills submitted to Medicare, Medicaid, or applicable insurance plan for items or services which are known are not covered by Medicaid, Medicare, or applicable insurance plan;
5. Filing claims for the same item or service to more than one payor source whereby Wesley Health Care Center will receive duplicate or double payments;
6. Submission of claims without the availability of adequate documentation;
7. Falsification of any report or document used to document the cost of utilization of services by payor source;
8. Failure to report a known error or inaccuracy in any cost report or underlying document used to prepare a cost report; and
9. Recording inappropriate, inaccurate, or non-allowable costs on a cost report.

Any employee or professional staff member who discovers an error or inaccuracy in any claim for payment for health care services that has been submitted or will be submitted should alert his or her supervisor, the Chief Financial Officer, or the Director of Corporate Compliance. Any employee who discovers an error or inaccuracy in any cost report that has been submitted or will be submitted should alert his or her supervisor, the Director of Finance, or the Director of Corporate Compliance.

D. Non-Discrimination in Resident Admissions, Services, and Charges

It is The Wesley Community's policy, as required by state and federal law, not to discriminate in the admission, retention, and care of residents because of race, color, blindness, national origin, sex, sexual preference, gender identity, religion, sponsorship, or source of payment. Each resident will receive medically necessary items and services that, in the opinion of the interdisciplinary care group and as set forth in that resident's plan of care, are required to assure the resident attains or maintains the highest practicable physical, psychosocial, and mental well-being.

Such medically necessary items and services shall be offered to the resident regardless of the resident's source of payment. Charges for all items and services provided shall be based upon The Wesley Community's usual and customary charges. Nothing of value, including but not limited to the offer of free of services, shall be offered to residents or prospective residents to induce them to utilize The Wesley Community's services.

Under appropriate circumstances, The Wesley Community may provide financial accommodation (such as allowing monthly payments over time) or may waive resident co-insurance payments or deductible amounts based on an assessment of the individual resident's financial condition and a determination that the payment of such co-insurance payment or deductible amount would cause a financial hardship for the resident. Any such financial accommodation must be based on financial hardship, documented in writing, and approved by The Wesley Community's Chief Financial Officer and the Director of Corporate Compliance. Any approved waiver of resident co-insurance payment or deductible amounts must be appropriately disclosed to all third-party payors responsible for the resident's bill.

In addition, it is Wesley Health Care Center's policy, as required by state and federal law, not to charge, for any service provided to a resident under Medicaid, money, or other consideration at a rate in excess of Wesley Health Care Center's established Medicaid reimbursement rate. Moreover, it is Wesley Health Care Center's policy not to charge, solicit, accept, or receive in addition to any amount otherwise required to be paid under Medicaid any gift, money, donation, or other consideration (other than a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to the patient) - (a) as a precondition of admitting a resident or (b) as a requirement for the resident's continued stay at Wesley Health Care Center.

The following activities are specifically prohibited under the Standards of Conduct and Ethics:

1. Failure to provide services that are either (a) ordered by the resident's physician; (b) indicated as necessary by the resident's most recent MDS assessment; and/or (c) contained in the resident's plan of care.
2. Rendering care based upon the resident's payor source without regard for the resident's needs and/or state of preferences;
3. Waiver of resident deductibles and/or co-insurance payments without advanced written approval of the Director of Corporate Compliance;
4. The offering or payment of anything of value, including but not limited to free services, to any resident or prospective resident to induce such individual to utilize The Wesley Community's services;
5. Discounts, credits, charity care, or other arrangements that have not been approved in writing by the Director of Corporate Compliance;

6. Discriminating in the admission, retention, and care of residents on the basis of race, color, blindness, national origin, sex, sexual preference, religion, sponsorship, or source of payment;
7. Charge a Medicaid resident for Medicaid-covered services provided by Wesley Health Care Center any money or consideration at a rate in excess of Wesley Health Care Center's established Medicaid rate; and
8. Charge, solicit, accept, or receive any gift, money, donation, or other consideration as:
 - (a) a precondition of admitting a resident to The Wesley Community or
 - (b) as a requirement for a resident's stay at The Wesley Community, except for charitable, religious, or philanthropic contributions from an organization or a person unrelated to the resident.

E. Confidentiality

Employees and professional staff members possess sensitive, privileged information about residents and their care. Residents properly expect that this information will be kept confidential. The Wesley Community takes very seriously any violation of a resident's confidentiality. Discussing a resident's medical condition or providing any information about a resident to anyone other than hospital personnel who need the information or other authorized persons will result in disciplinary action. Employees and professional staff should not discuss residents outside The Wesley Community or with their families.

The Wesley Community is required to maintain the confidentiality of each resident's medical record. In this regard, medical records may not be released except with the authorization of the resident, unless otherwise required or permitted by law. Special confidentiality requirements apply with regard to medical records relating to HIV infection and AIDS. Medical records from Wesley Health Care Center or Woodlawn Commons should not be altered, destroyed, or physically removed from the premises. Employees who have access to medical records must exercise their best efforts to preserve their confidentiality and integrity. No employee is permitted access to the medical record of any resident without a legitimate reason for doing so. If a question arises as to the permissibility of the release of a resident's medical record or any information contained therein, the employee should seek guidance from the employee's supervisor or the Director of Corporate Compliance.

Additionally, employees are to treat as confidential The Wesley Community's proprietary business assets including valuable ideas, business plans, and other information about The Wesley Community's business. The Wesley Community's employees should respect The Wesley Community's assets as they would their own. No employee shall divulge to unauthorized persons, either during or after their employment, any information of a confidential nature connected with the business of The Wesley Community. Examples of confidential business information include personnel information, such as job title, level, duties, skill, or salary; or any information disclosure of which could adversely affect the business interests of The Wesley Community.

F. Business Entertainment or Gifts

The Wesley Community recognizes that business dealings may include shared meals or other similar social occasions which may be proper business expenses and activities. More extensive entertainment, however, only rarely will be consistent with The Wesley Community's policy and

should be reviewed and approved in advance by the Director of Corporate Compliance before the employee may partake of or offer such entertainment.

Employees may not receive any gift under circumstances that could be construed as an improper attempt to influence The Wesley Community's decisions or actions. Moreover, employees may not receive any gift from any vendor who provides services to The Wesley Community or is seeking to provide services to The Wesley Community or from any actual or potential patient referral sources. When an employee receives a gift that violates this policy, the gift should be returned to the donor and reported to the Director of Corporate Compliance. Gifts may be received by employees when they are of such nominal value that they would not reasonably be perceived by anyone as an attempt to affect the judgment of the recipient, for example, token promotional gratuities from suppliers, such as advertising novelties marked with the donor's name, are not prohibited under this policy.

No employee may make a cash gift or non-cash gift of more than nominal value to any officer, director, or employee of a firm or entity or any individual that is an actual or prospective vendor of The Wesley Community or an actual or potential source of referrals.

Under no circumstances may an employee of The Wesley Community pay for the meals, refreshment, travel, lodging expenses, or give anything of value to a government employee (state, federal, or local) who in the course of his or her official conduct may investigate, survey, or otherwise deal with The Wesley Community.

Moreover, no employee may charge, solicit, accept, or receive in addition to any amount otherwise required to be paid by third party payors, any gift, money, or other consideration from a resident or organization or person related to a resident as a pre-condition of admission or as a requirement for continued stay at The Wesley Community.

Further, no employee may request and/or accept any remuneration, tip, or gratuity in any form from a resident, resident's family, or sponsor for any services provided or arranged for or for denial of services by The Wesley Community other than specified fees ordinarily paid for care excluding donations, gifts, and legacies given in behalf of The Wesley Community.

If an employee has any question as to whether (1) the receipt of a gift or offering of a gift or (2) the participation in an entertainment event or the offering to another the opportunity to participate in an entertainment event violates this policy, the employee is required to seek guidance from the Director of Corporate Compliance.

G. Conflicts of Interest

No employee should place him or herself or allow him or herself to be placed in a situation where the employee's personal interests might conflict with the interests of The Wesley Community. The Wesley Community recognizes and respects an individual employee's right to invest or participate in activities outside of his/her employment provided that these in no way conflict with The Wesley Community's interests or welfare and do not interfere with the employee's responsibilities to The Wesley Community or the effectiveness of the employee's job performance.

Although it is difficult to set forth all possible situations which might be considered as conflicting with The Wesley Community's interests, the following are examples of situations which employees, including members of their immediate families, must avoid:

1. No employee should perform any outside employment or engage in any outside activities which interfere with the effective performance of the employee's duties as a Wesley Community employee;
2. No employee shall have a financial interest in a firm or entity which is doing, or seeking to do, business with The Wesley Community or which is a competitor of The Wesley Community. However, ownership of less than 1% of the securities of a publicly traded company shall not be considered significant or contrary to this policy;
3. No employee should render services in any capacity, such as a director, officer, employee or consultant to any person or firm that is competitive with The Wesley Community, provides services to The Wesley Community or is a third-party payor with regard to services provided at The Wesley Community;
4. No employee should use their position at The Wesley Community for personal gain such as by soliciting or accepting for personal benefit business opportunities that might otherwise accrue to the benefit of The Wesley Community;
5. No employee should use for his or her personal benefit, or disclose to unauthorized persons, any confidential or proprietary information about The Wesley Community or its operation;
6. No employee should borrow money from individuals or firms (other than banks and/or lending institutions) doing, or seeking to do, business with The Wesley Community;
7. No employee should compete with The Wesley Community by selling or leasing or offering to sell or lease services or products similar to those services or products offered by The Wesley Community;
8. No employee should purchase services or products for The Wesley Community from their family members or from business organizations with which they or their family members are associated, without first obtaining written permission from the Director of Corporate Compliance;
9. No employee or member of their immediate family should accept significant gifts, discounts, or other preferred personal treatment from any person associated with a present or prospective customer, competitor, or supplier of The Wesley Community;
10. No employee should have outside employment or business interests that place the employee in a position of appearing to represent The Wesley Community, including any social media posts in which an employee appears to represent the organization; and
11. No employee may use The Wesley Community's assets for personal benefit or personal business purposes.

Any personal or business activities by an employee that may raise concerns along these lines must be reviewed with and approved in advance and in writing by the Director of Corporate Compliance.

H. Governance

The Wesley Community is committed to being compliant with applicable laws pertaining to its governance, including, but not limited to, the New York Not-for-Profit Corporation Law, the

New York Public Health Law, the rules and regulations of the New York State Department of Health, the Internal Revenue Code, and the pertinent regulations of the Internal Revenue Service. The Wesley Community's directors and officers will adhere to conduct which is compliant with such laws and regulations. Moreover, The Wesley Community's directors and officers will adhere to and comply with all applicable The Wesley Community policies pertaining to governance, including The Wesley Community's conflict of interest policy pertaining to its directors and officers.

I. Credentialing

Professional staff subject to The Wesley Community's credentialing requirements will comply with The Wesley Community's credentialing policies and procedures, including, but not limited to, the timely submission of all documentation, information, waivers, and releases required for the credentialing/recredentialing of professional staff members. Professional staff members shall comply with all applicable laws pertaining to the practice of their profession, including, but not limited to, the New York Education Law and the Department of Education's regulations, and will avoid any actions or omissions that would constitute an unacceptable practice under either the New York Education Law or the Department of Education's regulations. Professional staff members will immediately notify The Wesley Community's medical director of any events or circumstances that would adversely impact upon the member's professional privileges or professional practice, including, but not limited to, the initiation of any professional disciplinary action by the Office of Professional Medical Conduct or the New York State Education Department.

J. 42 U.S.C. 1396-a(a)(68)

The Wesley Community recognizes the need for it and New York State to comply with certain federal requirements pertaining to medical assistance programs. Accordingly, pursuant to 42 U.S.C.1396-a(a)(68), and to the extent that Wesley Health Care Center receives or makes annual payments under New York State's medical assistance plan of at least \$5,000,000, The Wesley Community has:

- i. Established written policies for all Affected Individuals that provide detailed information about:
 - A. The False Claims Act established under sections 3729 through 3733 of title 31;
 - B. Administrative remedies for false claims and statements established under chapter 38 of title 31;
 - C. Any State laws pertaining to civil or criminal penalties for false claims and statements; and
 - D. Whistleblower protections under such laws, with respect to the role of such laws in preventing and detecting fraud, waste, and abuse in Federal health care programs (as defined in section 1320a-7b(f) Title 42);
- ii. Included as part of its written policies, detailed provisions regarding The Wesley Community's policies and procedures for detecting and preventing fraud, waste, and abuse; and

- iii. Included in its employee handbook:
 - A. The specific discussion of the laws described above;
 - B. The rights of employees to be protected as whistleblowers; and
 - C. The entity's policies and procedures for detecting and preventing fraud, waste, and abuse.

Additionally, a summary of federal and New York State laws on false claims and whistleblower protections, as prepared and provided by the OMIG and which is made available to all Affected Individuals is set forth in Appendix A. The specific discussion of these laws, the rights of employees to be protected, and The Wesley Community's applicable policies are included in the employee handbook.

COMPLIANCE LEADERSHIP AND OVERSIGHT

The Board and senior leadership are vital to the success of The Wesley Community's Corporate Compliance and Ethics Program. An effective Compliance and Ethics Program reduces and mitigates risk, provides patients safe and high-quality care, and saves costs. The Corporate Compliance and Ethics Program Charter can be reviewed in Appendix E.

To assure that The Wesley Community's operations are being conducted in compliance with applicable law and the highest ethical standards, The Wesley Community has established the position of Director of Corporate Compliance. A Compliance and Ethics Committee (CEC) has also been established to help oversee the implementation and operation of the Program.

A. Current Director of Corporate Compliance

Amy L. Michaud-Wells, Ed.D.

E-mail: alwells@thewesleycommunity.org

Phone: 518.691.1406

B. Responsibilities of the Director of Corporate Compliance

The primary responsibilities of the Director of Corporate Compliance include, but are not limited to, the following:

1. Oversee and monitor the implementation and operation of the Compliance and Ethics program;
2. Coordinate appropriate accountability for compliance with the fundamental federal and state legal and regulatory requirements that apply to all facets of The Wesley Community's mission and work;

3. Report to the Board on the implementation, operation, and needs of the Compliance and Ethics Program, the compliance risks The Wesley Community faces, and the methods through which the Compliance and Ethics Committee is addressing or can address those risks;
4. Revise the Compliance and Ethics Program periodically in light of changes in the needs of the organization, applicable law, and policies and procedures of third-party payors;
5. Coordinate with Human Resources to ensure that all directors, officers, employees, contractors, and medical staff, if applicable, are screened before appointment or engagement and monthly thereafter against the List of Excluded Individuals and Entities (LEIE) and any applicable State Medicaid program exclusion lists;
6. Coordinate with other relevant entity components (e.g., as applicable Legal, Internal Audit, Risk Management, Health Information Management, Quality*, IT, Human Resources, Security, etc.) to develop work plans for reviewing, monitoring, and auditing compliance risks;
7. Independently investigate and act on matters related to compliance, including the flexibility of design and coordinate internal investigations (e.g., responding to reports involving, for example, compliance concerns or suspected legal violations) and to make recommendations for process and policy changes and corrective action;
8. Develop policies and programs that encourage personnel to report suspected fraud and other improprieties without fear of retaliation; and
9. Chair the Compliance and Ethics Committee (CEC) and facilitate and participate in all the activities listed as CEC responsibilities.

* Per the November 2023 General Compliance Program Guidance document, “quality” means both quality in manufacturing and supplying drugs, devices, and other items, and quality of care in the provision of items and services.

C. Director of Corporate Compliance: Program Oversight

The Director of Corporate Compliance reports directly to the CEO and the Board. The Director of Corporate Compliance will also provide periodic reports to Board Members regarding Compliance and Ethics Committee activities and progress towards established objectives.

The Director of Corporate Compliance has the authority to review all documents, data, and other information that are relevant to the organization’s compliance activities. This includes, but is not limited to, patient records, billing records, sales and marketing records, and records concerning the entity’s arrangements with other parties, including employees, independent contractors, suppliers, physicians, and other health care professionals. The Director of Corporate Compliance has the authority to interview anyone within the organization in connection with a compliance investigation or designate an appropriate person to conduct such an interview.

D. The Compliance and Ethics Committee (CEC)

The Compliance and Ethics Committee's purpose is to aid and support the Director of Corporate Compliance in implementing, operating, and monitoring the Corporate Compliance and Ethics Program. The CEC is comprised of the relevant leaders of both operational and supporting departments. CEC Members meet monthly to address issues relevant to The Wesley Community and complete activities related to Program initiatives.

E. Current Members of the Compliance and Ethics Committee (CEC)

Director of Corporate Compliance, Chair
Administrator of Wesley Health Care Center
Assistant Director of Nursing / Grievance Officer
Chief Executive Officer
Chief Strategy Officer
Chief Financial Officer
Director of Admissions
Director of Assisted Living – Woodlawn Commons
Director of Development and Communication
Director of Education
Director of Embury Apartments
Director of Engineering
Director of Environmental Services
Director of Human Resources
Director of Independent Living – Woodlawn Commons
Director of Information Technology
Director of Inpatient Therapies
Director of Life Enrichment
Director of Maintenance
Director of Nursing
Director of Outpatient Therapies
Director of Pharmacy
Director of Social Services
Executive Administrative Assistant
Manager of Nutritional Services
MDS Coordinator
Purchaser

F. Responsibilities of the Compliance and Ethics Committee (CEC)

In support of the Director of Corporate Compliance, the primary responsibilities of the CEC include, but are not limited to, the following:

1. Overseeing and evaluating the structure, operations, and effectiveness of the Compliance and Ethics Program in adherence to the Program Self-Assessment from the Office of the Medicaid Inspector General (OMIG);

2. Promoting the appropriate tone at the top and fully supporting a culture of compliance and ethical behavior and nonretaliation, including effective communication of such throughout the organization;
3. Staying abreast of significant developments relating to the compliance expectations from federal and state legislators, regulators, and/or enforcement officials;
4. Assisting the Director of Corporate Compliance in ensuring the Code of Conduct and Ethics and compliance-related policies and procedures are complete, periodically revised as necessary, and consistently enforced;
5. Ensuring that annual compliance training is developed and conducted, as well as review the annual compliance training plan addressing key compliance risks;
6. Reviewing and approving annually the compliance risk assessment and associated work plan, which includes compliance auditing and monitoring initiatives;
7. Reviewing periodically the findings of compliance auditing and monitoring initiatives and ensuring that management develops and timely implements appropriate corrective actions in response to the findings;
8. Ensuring that the Compliance and Ethics Program includes a Disclosure Program that has effective open communication channels, including a hotline and web-based options for employees, patients, and third parties to report, in good faith and anonymously, if they wish, all compliance and ethical concerns;
9. Assisting the Director of Corporate Compliance in fulfilling compliance reporting obligations to the Board by timely informing the Director of Corporate Compliance of any known audits, reviews, and/or investigations by government agencies; potential overpayments to federal healthcare programs; and employment or engagement of an individual or entity who is currently, or is likely to be, excluded, debarred, suspended, or otherwise declared ineligible to participate in federal healthcare programs or federal procurement or nonprocurement programs;
10. Periodically, and no less than annually, assessing the CEC's oversight of the Compliance and Ethics Program as evidenced by operating in conformance with all Charter requirements; and
11. Periodically reviewing and revising, as appropriate, the Charter.

G. Board of Directors and Compliance Oversight

The United States Sentencing Commission's Guidelines (§ 3E1.1, Nov. 2021) require that an entity's "governing authority shall be knowledgeable about the content and operation of the compliance and ethics program and shall exercise reasonable oversight with respect to the implementation and effectiveness of the compliance and ethics program." 58

The Board's exercise of this responsibility will include receiving and reviewing information necessary to understand The Wesley Community's compliance risks. The Board will also have access to sufficient knowledge and resources to allow it to fulfill its compliance-related obligations competently.

The Board will meet with the Director of Corporate Compliance on a regular basis. The Director of Corporate Compliance will provide the Board with regular reports regarding The Wesley Community's Compliance and Ethics Program, activities, and risks, and participate in an oral discussion of the report with Board Members.

When necessary, the Board will be asked to reserve time for an executive meeting with the Director of Corporate Compliance, without non-board members present, to permit the Board and the Corporate Compliance Director to have an uninhibited discussion of compliance risks of concern, including the adequacy and effectiveness of the Compliance and Ethics Committee (CEC) and resources.

Through the meetings with the Director of Corporate Compliance, the Compliance and Ethics Committee will provide the Board with regular reports on member activities and attendance. If needed, the Board will ensure that the CEO enforces accountability.

TRAINING AND EDUCATION

To ensure that all employees, professional staff members, executives, and directors are familiar with their responsibilities under The Wesley Community's Compliance and Ethics Program, The Wesley Community will implement an ongoing training and educational program. All employees, professional staff members, executives and directors will be required to participate in initial and annual training sessions.

The Director of Corporate Compliance, with the support and aid of the Compliance and Ethics Committee (CEC), will develop and coordinate a multifaceted training and education program specific to the needs of and risks presented by the entity. The program should include training and education on The Wesley Community's Compliance and Ethics Program, federal and state standards applicable to The Wesley Community, and Board governance and oversight of a health care entity. The Director of Corporate Compliance maintains a record of all training plans, as well as potential, planned, and completed training modules.

A. Initial and Annual Training

Initial and annual training sessions will focus on the requirements of The Wesley Community's Compliance and Ethics Program as set forth in this manual and the legal and ethical standards generally required of all employees, professional staff members, executives, and directors. Each employee, professional staff member, executive, and director will be required to sign a certification acknowledging attendance at the initial and each annual Compliance Training Session.

B. Annual Training Plan

The Director of Corporate Compliance and Compliance and Ethics Committee (CEC) will develop an annual training plan that includes the training topics to be delivered and the target audience for each topic. The annual training plan will incorporate material addressing any concerns identified in audits and investigations. The Director of Corporate Compliance and the CEC should review the training plan at least annually to ensure that compliance training topics and materials address current needs, including any issues identified through monitoring and auditing and changes to federal and state health care requirements.

C. Periodic Targeted Training

Periodic training sessions, as necessary, will be conducted, as determined by the Director of Corporate Compliance, the Compliance and Ethics Committee (CEC), and/or respective Department Head, for employees of certain departments. These targeted training sessions will address federal health care program rules applicable to the entity's business. The training sessions will cover any compliance risks specific to the learners' roles and responsibilities. Depending on the learners' roles, these may include, for example, billing, coding, documentation, medical necessity, beneficiary inducements, gifts, interactions with physicians and other sources or recipients of referrals of federal health care program business, and sales and marketing practices. The training and education program will also include a requirement that licensed personnel must complete all education and training mandated by the licensing board that governs their license.

It is the understanding of the CEC that appropriate periodic training takes place at the respective Department Head's discretion. Training may be intramural or extramural, as appropriate. When considering outside training sources, the Director of Corporate Compliance will consider the following options, including offerings of professional organizations; programs offered by carriers; third-party billing company seminars; the services of an outside consultant; and other resources as available and appropriate. Topics for training may be drawn from publications such as OMIG publications; DOH Medicaid Updates; the OIG's Special Fraud Alerts; OIG Advisory Opinions; and Medicare Part B News. Examples of topics that may be pertinent to such an individual's responsibilities include:

- Coding requirements and methodology, including proper use of The Wesley Community's medical record documentation forms;
- General understanding of the claim development and submission processes;
- Proper billing standards and procedures and submission of accurate bills to payors and patients; and
- Legal sanctions for submitting deliberately or recklessly false billings.

D. Periodic Targeted Training for the Board of Directors

Targeted training will be developed for Board Members. New Board Members will receive training on their governance and compliance roles promptly after joining the Board. The initial Board training will address the specific responsibilities of health care Board Members, including

the risks, oversight areas, and approaches to conducting effective oversight of a health care entity. The Director of Corporate Compliance will arrange additional, periodic training to update the Board on The Wesley Community's compliance risks, including changes to applicable Federal and State health care requirements.

E. Accessibility of Training Materials

The Director of Corporate Compliance and the Compliance and Ethics Committee (CEC) are committed to the training and education of all members of The Wesley Community. As such, training and educational materials will be accessible to all members of the designated audience. For example, training materials can be made available in other languages. Training will be provided in many formats—live (in-person or via videoconference), a computer-based training, or through watching a pre-recorded video. Regardless of the format, training participants are encouraged to follow up with the appropriate personnel or their supervisor to ask questions about the training and/or educational content.

F. Failure to Attend Required Training

Any employee or professional staff member or executive who fails to attend a training session for which the employee or professional staff member or executive is required to attend, will result in disciplinary action. Repeated failures to attend required training sessions will result in termination of employment and/or loss of professional privileges. Directors who fail to attend required training sessions may be subject to removal from the Board of Directors.

G. Ongoing Communication and Potential Changes in the Compliance and Ethics Program

The Director of Corporate Compliance will distribute in writing and/or post in conspicuous places, any modifications of, or amendments to the Compliance Program. The Director of Corporate Compliance will also provide employees, professional staff members, executives, and directors with written explanations of any substantial changes in the Compliance Program. If the Director of Corporate Compliance determines that written materials are insufficient, interim training sessions will be conducted.

Employees, professional staff, executives, and directors will be provided periodic information about The Wesley Community's Compliance Program, as well as changes in applicable laws or ethical standards that may affect their respective responsibilities through written memoranda, newsletters, periodic training sessions, or other appropriate forms of communication.

The Wesley Community has also established and implemented effective and confidential lines of communication between the Director of Corporate Compliance, members of the Compliance and Ethics Committee (CEC), the organization's employees, managers and governing body, and the organizations first tier, downstream, and related entities. These lines of communication are accessible to all and are designed to allow compliance issues to be reported including a method for anonymous and confidential good faith reporting of potential compliance issues as they are identified.

H. Communication with Welsey Contractors

Under the Deficit Reduction Act (DRA), The Wesley Community is required to disseminate information on Corporate Compliance to all contractors and agents who, on behalf of The Wesley Community, furnish or authorize the furnishing of Medicaid health care items or services; perform billing or coding functions; or are involved in the monitoring of health care provided by The Wesley Community. The DRA requires that all such contractors and agents adopt and abide this Policy in relation to all work performed for The Wesley Community; train their employees who are involved in performing work for The Wesley Community to comply with applicable laws; and make this Policy available to those employees. To facilitate our contractors' and agents' compliance training and education, this Policy is posted on The Wesley Community's website.

COMMUNICATION WITH THE DIRECTOR OF CORPORATE COMPLIANCE AND DISCLOSURE PROGRAMS

An open line of communication between the Director of Corporate Compliance and all Affected Individuals who are members of The Wesley Community, including contractors and agents, is critical to the successful implementation of the Compliance and Ethics Program and the reduction of any potential for fraud, waste, and abuse. Members of The Wesley Community are encouraged to bring compliance questions and/or issues to the Director of Corporate Compliance. All Affected Individuals have available to them the following anonymous and/or confidential reporting options:

A. Reporting

It is the responsibility of every Affected Individual to report any known instances of, or reasonable suspicions of, any violation of applicable state or federal law, ethical standards, or The Wesley Community's policies, including the standards of conduct contained in this Program. To report a suspected violation, an individual is required to notify, either verbally or in writing, the Director of Corporate Compliance or the individual's immediate supervisor, if an employee or professional staff member.

There are several ways in which anyone can report a potential issue of non-compliance, including the following methods:

1. Anonymous Reporting

- a. Completing the online form under the Corporate Compliance section of The Wesley Community's website, <https://www.thewesleycommunity.org>.

Simply scroll to the bottom of the landing page to locate the Corporate Compliance section.

The platform allows you to provide the required information needed to submit a complete report and add supporting evidence, if applicable.

- b. If you are an employee, you may complete a printed version of the form located near one of the following Compliance Dropboxes:
 - i. Wesley Health Care Center: Springs Staff Lounge
 - ii. Woodlawn Commons: Woodlawn Staff Lounge
 - iii. Embury Apartments: East Tower Entrance Vestibule

2. Known Reporting

- a. Report the potential incident of non-compliance directly to the Director of Corporate Compliance, a member of the Corporate Compliance and Ethics Committee (see list on page 19), or a supervisor.
- b. Leave a message requesting a return call on the Compliance Hotline by dialing 518.691.1646.
- c. E-mail the Corporate Compliance e-mail account:
compliance@thewesleycommunity.org

B. Examples of Activities to be Reported

The following list of activities that should be reported is not an all-inclusive list, but rather is designed to illustrate the types of conduct that should be reported:

1. The acquisition of any information that gives an individual reason to believe that an employee, professional staff member, or contractor is engaged in or plans to engage in any conduct prohibited by applicable law, ethical standards, or the policies of The Wesley Community, including the Standards of Conduct and Ethics contained herein (hereinafter collectively "Standards")
2. The acquisition of any information indicating that any other person or entity associated with The Wesley Community plans to violate any of the foregoing Standards; and
3. An employee is instructed, directed, or requested to engage in conduct which violates any of the foregoing Standards.

C. Confidentiality

To the extent permissible, The Wesley Community shall treat all reports of suspected violations of Standards as confidential. However, it must be recognized that under certain circumstances, the name of the individual making the report will be communicated to the Director of Corporate Compliance, if the report is made originally to the employee's supervisor, to an individual responsible for investigating the suspected violation, or to a governmental agency

investigating any such suspected violation. Any such disclosure will only be made on a bona fide need-to-know basis.

D. Non-Retaliation and Non-Intimidation

To ensure employee cooperation, neither The Wesley Community nor its respective employees, professional staff members, executives, and directors shall retaliate or intimidate any individual from good faith participation in the Program, including but not limited to, submitting a report of a suspected violation or participating in an investigation, self-evaluation, or audit of a suspected violation. Any employee, professional staff member, executive, or director who intimidates another employee or takes retaliatory action or retribution against another employee who has either reported a suspected violation or participated in an investigation of a suspected violation will be subject to disciplinary action or, as to a director, removal from the Board of Directors.

ENFORCING STANDARDS: CONSEQUENCES AND INCENTIVES

For The Wesley Community’s Compliance and Ethics Program to be effective, the organization has established appropriate consequences for instances of noncompliance, as well as incentives for compliance. Consequences may involve remediation, sanctions, or both, depending on the facts. Incentives may be used to encourage compliance performance and innovation. Both consequences and incentives are important to enforcing compliance.

A. Consequences

Consequences, as used here, are the result of noncompliant actions. Consequences may be educational or remedial and non-punitive, they may be punitive sanctions, or they may involve both. Consequences may be appropriate where a responsible individual’s failure to detect a violation is attributable to their ignorance, negligence, or reckless conduct. Intentional or reckless noncompliance should subject individuals to significant sanctions.

All employees, professional staff members, executives, and directors are required to comply with applicable federal and state laws, ethical standards, and The Wesley Community's policies, including the Standards of Conduct and Ethics contained in this manual (hereinafter collectively "Standards"). Any employee or professional staff member or executive who violates any of the foregoing Standards will be subject to disciplinary action, up to and including termination of employment or termination of professional staff privileges. Any director who violates any of the foregoing Standards may be subject to removal from the Board of Directors.

Disciplinary action will be taken against an employee or professional staff member who:

1. Authorizes or participates directly in the violation of a Standard;

2. Deliberately fails to report a violation or Standard;
3. Deliberately withholds relevant and material information concerning the violation of a Standard;
4. Retaliates or seeks or causes retribution against any individual who has either reported a suspected violation of a Standard or participated in an investigation of a suspected violation;
5. Encourages, directs, facilitates, or permits either actively or passively non-compliant behavior; and
6. Fails to participate in required training programs.

Disciplinary action may also be taken against any supervisory personnel who direct or approve an employee's actions which result in a violation of a Standard, is aware that an employee's actions which violate a Standard but fails to take appropriate corrective action, or who otherwise fails to exercise appropriate supervision.

Disciplinary action may include oral or written warning, probation, suspension, demotion, termination staff privileges, suspension, or termination of from employment. Disciplinary action will be taken in accordance with The Wesley Community's personnel policies and procedures. Disciplinary action will be taken on a fair, equitable, and consistent basis. Disciplinary action will be appropriate to the level of the employee's culpable conduct, that is, the more serious the level of culpable conduct (intentional conduct or reckless non-compliance) will result in more significant disciplinary action. Notwithstanding the foregoing, this statement is not a guaranty of progressive discipline, and The Wesley Community reserves the right to terminate an employee at any time for any lawful reason.

B. Incentives

The Wesley Community is committed to an organization-wide approach to compliance. Creating a culture of compliance offers several benefits, including but not limited to,

1. Proactively protecting The Wesley Community from legal, financial, and reputational harm;
2. Increasing operational efficiency;
3. Encouraging all personnel to report potential compliance issues without fear of retaliation, retribution, and intimidation; and
4. Integrating The Wesley Community's dedication to honest, ethical, and responsible conduct and embracing excellence in all aspects of our work.

To promote a culture of compliance, The Wesley Community would like to recognize the compliance performance, activities, and/or efforts of individuals, teams, and/or departments.

Demonstrating a commitment to building and maintaining a culture of compliance can include, but is not limited to, the following behaviors:

1. Achievements that reduce compliance risk (e.g., a team that develops a process that reduces compliance risk or enhances compliant outcomes, or an individual who suggests a method of attaining a strategic goal with less risk);
2. The achievement of compliance goals that are specific to a department or a specific position description; or
3. Performance of compliance activities outside of the individual's job description (e.g., mentoring of colleagues in compliant performance or performing as a compliance representative within their department or team).

RISK ASSESSMENT, AUDITING, AND MONITORING

Risk assessment, auditing, and monitoring each play a role in identifying and quantifying compliance risk. Although identifying and addressing risk have always been at the core of compliance programs, in recent years Office of the Inspector General (OIG), the compliance community, and other stakeholders have come to recognize and place increasing emphasis upon the importance of a formal compliance risk assessment process as part of the compliance program.

The Wesley Community has in place a system for routinely identifying compliance risk areas and for self-evaluation, including internal and external audits as needed. It is intended that this process will result in continuous improvement in professional, business, and operational practices of The Wesley Community.

A. Risk Assessment

Risk assessment is a process for identifying, analyzing, and responding to risk. The compliance risk assessment at The Wesley Community focuses on risks stemming from violations of government health care program requirements and other actions (or failures to act) that may adversely affect The Wesley's Community's ability to comply with those requirements. As such, periodic compliance risk assessments will be conducted at least annually, at most, quarterly.

The Centers for Medicare and Medicaid Services, the Office of the Inspector of General, the New York State Department of Health and the New York State Office of the Medicaid Inspector General, have made information on the Medicare and Medicaid programs available on their respective websites and The Wesley Community will utilize such resources in operating its compliance program and continuing to monitor the progress of its Compliance and Ethics Program.

As required by the circumstances, The Wesley Community will seek the advice of consultants for assistance in coding questions and will consult with legal counsel for assistance in interpreting federal and state regulations and guidance as needed.

B. Compliance and Ethics Committee's Role in Risk Assessment

A formal compliance risk assessment process pulls information about risks from a variety of external and internal sources, provides the opportunity to evaluate and prioritize the risks, and then allows the Compliance and Ethics Committee (CEC) to decide which risks to address and how to address them. With this information, the CEC can work with the compliance officer to prioritize resources and develop the compliance work plan, including audits and monitoring of identified risks based on priority.

Risk areas identified by internal or outside audits will be examined in subsequent internal audits as warranted. Where an audit reveals the need for additional education of employees and clinical staff, the Director of Corporate Compliance, the CEC, and/or the Department Director will determine the means by which additional training and education will be implemented.

C. Auditing, Monitoring, and the Compliance & Ethics Work Plan

The Compliance and Ethics Committee (CEC) will include in the compliance work plan a schedule of audits to be conducted based on risks identified by the annual risk assessment, which will include the flexibility to conduct unscheduled audits that may be necessary. Focused audits will be performed to verify implementation of any recommended corrective actions.

The compliance work plan will be a living document to reflect the consideration and evaluation of the Program elements and content, as well as contain routine monitoring of ongoing risks, plus the capacity to monitor the effectiveness of controls and risk remediation. Examples of routine monitoring of known risks include, but are not limited to:

1. Monthly screening of the LEIE and State Medicaid exclusion lists;
2. Regular screening of State licensure and certification databases; and
3. Annual review of the entity's policies and procedures.

The Director of Corporate Compliance, Department Director, and/or or designee will be responsible for the processes for reviewing bills and medical records for compliance with applicable coding, billing, and documentation requirements. A representative sampling of claims will be periodically reviewed prior to submission, and any identified defects will be corrected.

Self-audits will be used to review such matters as:

1. Whether bills are properly coded and accurately reflect the services provided and documented in the medical record;
2. Whether documentation is completed correctly;
3. Whether the services or items provided were medically reasonable and necessary;

4. Whether the services were provided by appropriately credentialed individuals;
and
5. Whether there were any incentives for unnecessary services.

In addition to internal monitoring and auditing, the Director of Corporate Compliance will be responsible for procedures to review denied, rejected, and down-coded claims. Any rejection or down-coding patterns that are identified will be promptly addressed, with additional training and education as needed.

The Wesley Community will continue the practice of developing written policies and procedures that address identified risk areas. These written policies and procedures will be communicated to staff members as necessary and pertinent. Risk areas, may include but are not limited to those that are identified during quality improvement and credentialing processes, and will be addressed as appropriate in periodic and special audits.

Risk areas are also identified from time to time by Office of the Investigator General, Office of the Medicaid Inspector General, or other authorities will be addressed in The Wesley Community's auditing activities as appropriate.

The Office of the Inspector General Guidance has identified the following as areas of potential risk:

1. Billing and coding;
2. Documentation, including legibility;
3. Medical necessity;
4. Beneficiary inducements;
5. Gifts;
6. Interactions with physicians and other sources or recipients of referrals of federal health care program business
7. Sales and marketing practices;
8. Non-covered services;
9. Billing for services of physician extenders; and
10. Improper inducements, kickbacks and self-referrals.

Risk areas identified by Office of the Medicaid Inspector General include:

1. Reserved bed day billings;
2. Base year cost calculations;

3. Review of ancillary services included in the Medicaid rate;
4. Medicaid rate Part B carve outs;
5. Property/capital cost allocations;
6. Temporary staffing costs;
7. Review of resource utilization group (RUG-II) categorizations; and
8. Net available monthly income (NAMI) calculations.

Employees, professional staff members executives, directors, and, to the extent applicable, vendors and agents, will be required to cooperate with the compliance responsibilities and activities of The Wesley Community.

RESPONDING TO DETECTED OFFENSES AND DEVELOPING CORRECTIVE ACTION INITIATIVES

Concerns identified by the Director of Corporate Compliance, the Compliance and Ethics Committee (CEC), Affected Individuals, or other sources will be reviewed by the Director of Corporate Compliance. Under the direction of the Director of Corporate Compliance, such concerns will be prioritized, investigations will be undertaken as warranted, and appropriate corrective action programs will be implemented. Response may include coordination with quality improvement processes and programs, where pertinent and appropriate. Depending upon the nature of the concern, the Director of Compliance may consult with legal counsel to determine whether a significant and/or reportable violation of applicable law may have occurred, and, if so, the appropriate measures to take.

The Wesley Community has established and implemented procedures and a system for promptly responding to compliance issues as they are raised. This system begins at the time that an Affected Individual discloses the concern to the Director of Corporate Compliance, a member of the CEC, or the Affected Individual's direct supervisor(s).

The Wesley Community will promptly and thoroughly investigate any suspected violation and take appropriate disciplinary action if warranted. Investigations may be conducted internally by the Director of Corporate Compliance or other parties as deemed appropriate. Affected Individuals are required to cooperate with the individual or individuals investigating a suspected violation. Such cooperation may involve being interviewed by the individual or individuals conducting the investigation or supplying such individual or individuals with requested

documentation. Failure to cooperate in an investigation of a suspected violation may result in disciplinary action being taken.

A. Investigations of Violations

Violations of The Wesley Community's Compliance and Ethics Program, failures to comply with applicable federal or state laws and other types of misconduct threaten The Wesley Community's status as a trustworthy organization capable of participating in federal health care programs and the health care industry. Detected but uncorrected misconduct can seriously endanger the mission, reputation, and legal status of The Wesley Community. Consequently, it is important that the Director of Corporate Compliance act promptly to notify appropriate leaders and coordinate with entity counsel as needed upon receipt of reports or reasonable indications of suspected noncompliance to determine whether a material violation of applicable law has occurred.

Whether a material violation of applicable law exists must be determined on a case-by-case basis. Allegations of noncompliant conduct will be investigated to determine whether, and what kind of, corrective action and reporting is necessary.

B. Corrective Actions and Reporting

The Wesley Community also has procedures and a system in place for correcting compliance concerns and problems. As appropriate, corrective actions may include one or more of the following:

1. Discipline of an employee up to and including termination;
2. Retraining;
3. Reporting and return of overpayments within 60 days of identification;
4. Self-disclosure to the carrier intermediary or the Office of the Inspector General or Office of the Medicaid Inspector General;
5. Revision of a The Wesley Community policy;
6. Implementation of procedures, policies, or systems to reduce the potential for recurrence; or
7. Modification of a relationship with an outside party, such as a billing company.

Where the concern or problem relates to the acts or omissions by an Affected Individual, the Director of Corporate Compliance or, as appropriate, the Compliance and Ethics Committee member, will address the issue with the individual and use reasonable efforts (including investigation as necessary) to identify the root cause of the individual's failure to act in a manner required by law or this Program. The Affected Individual may also be subject to corrective or disciplinary action, which is determined based on the severity of the act and in accordance with The Wesley Community's policies and procedures.

If the concern or problem relates to the feasibility or efficacy of a policy or

procedure, (for example, if a policy under the Program failed to anticipate, detect, or prevent a problem) the Director of Corporate Compliance will review such policies and procedures to determine what changes, if any, should be modified to reduce the likelihood of recurrence. If such a Program failure or deficiency is identified, the Program will be revised, if practicable, in a manner that minimizes the risk of future failures.

From time to time, but no less than annually, the Director of Corporate Compliance shall review relevant law and guidance to ensure the ongoing and compliance with the medical assistance program and related requirements. The Director of Corporate Compliance's review includes reviewing and monitoring applicable state and federal regulations (for example, those found in the Social Services Law and 18 NYCRR 521) and keeping current with all guidance or directives issued by federal or state agencies (including, for example, Department of Health, Centers for Medicare & Medicaid Services, Office of the Medicaid Inspector General, and the Office of the Inspector General).

In the event the Director of Corporate Compliance identifies an area that is no longer in compliance or is no longer effective, he/she will take action to modify the practice or policy that is to be revised.

This Program will be revised and updated from time to time to reflect ongoing Program assessment, current compliance guidance, the requirements of regulatory agencies, and considerations of best practices.

This document is not intended to serve as an express or implied employment contract, nor shall it be construed to confer any right upon any individual. Its objective is to communicate current policies relating to the compliance efforts of The Wesley Community. The Board of The Wesley Community reserves the right to change, modify, or waive all provisions herein. Any questions or concerns should be forwarded to the Director of Corporate Compliance or any member of the Compliance and Ethics Committee.

APPENDIX A FEDERAL FALSE CLAIMS ACT

A. False Claims and Penalties

The Federal False Claims Act (“Act”) imposes civil liability upon any person (individual or entity) for knowingly making a false claim to the United States government (“Government”). Specifically, the Act sets forth seven circumstances for which civil liability will be imposed for false claims. These seven circumstances are:

1. To knowingly present, or cause to be presented, to the Government a false or fraudulent claim for payment or approval;
2. To knowingly make, use, or cause to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government;
3. To conspire to defraud the Government by getting a false or fraudulent claim allowed or paid;
4. To have possession, custody or control of property or money used, or to be used, by the Government and, intending to defraud the Government or to willfully conceal the property, to deliver or cause to be delivered, less property than the amount for which the person receives a certificate or receipt;
5. To authorize the making or delivery of a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, to make or deliver the receipt without completely knowing that the information on the receipt is true;
6. To knowingly buy, or receive as a pledge of an obligation or debt, public property from an officer or employee of the Government who lawfully may not sell or pledge the property; or
7. To knowingly make, use, or cause to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government;

The civil monetary penalty that can be imposed for a false claim under the Act is not less than \$11,803.00 and not more than \$23,607.00, **PLUS** three times the amount of damages which the Government sustained because of the false claim. A Court may impose a lesser penalty of not less than two times the amount of damages sustained by the Government where the Court finds the following:

1. The person committing the violation furnished governmental officials responsible for investigating false claims with all information known to the person about the violation within thirty (30) days after the date on which the person first obtained the information;
2. The person fully cooperated with any governmental investigation of the violation; and
3. At the time the person furnished the Government with the information about the violation, no criminal prosecution, civil action, or administrative action had been commenced with respect to the violation and the person did not have actual knowledge of the existence of an investigation into the violation.

The Act defines the term “Claim” and the terms “Knowing” and “Knowingly”. A Claim is defined for purposes of the Act as follows:

Claim includes any request or demand, whether under a contract or otherwise, for money or property which is made to a contractor, grantee, or other recipient if the United States government provides any portion of the money or property which is requested or demanded or if the Government will reimburse such contractor, grantee or other recipient of any portion of the money or property which is requested or demanded.

The terms “Knowing” and “Knowingly” are defined as:

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.

In essence, civil monetary penalties may be imposed upon a person for making a false claim to the Government where the individual knows the information in the claim is false or acts in deliberate ignorance of the truth or falsity of the information in the claim or acts in reckless disregard of the truth or falsity of the information in the claim. Civil monetary penalties are imposed even where there is no specific intent to defraud the Government.

The Act applies to claims submitted under Medicare, Medicaid, other federal health care programs and other state health care programs funded, in whole or in part, by the federal government. Examples of false claims include, but are not limited to:

1. Filing a claim for payment knowing that the services were not provided or were medically unnecessary;
2. Submitting a claim for payment knowing that excessive charges are being billed;
3. Submitting a claim for payment knowing that a higher billing code which does not reflect the services provided is used;
4. Filing a claim knowing that the claim is for duplicate services.

The Act has been used as a basis to impose civil monetary penalties upon nursing homes in situations involving egregious substandard quality of care, that is, the resident’s condition is so bad that the services billed for could not have been provided.

B. Civil Actions under the Act

Enforcement of the Act is the responsibility of the United States Attorney General. However, private individuals have the ability to bring a civil action for a violation of the Act. These private actions are known as “Qui Tam” actions.

Qui Tam actions are brought by private individuals in the name of the Government. When the complaint in an action brought by a private individual is filed with the Court, it remains under seal for a period of sixty days and cannot to be served upon the defendants named therein until ordered by the Court. Under seal means that the action remains confidential and is not subject to disclosure. The private individual must serve a copy of the complaint and written disclosures of substantially all material evidence and information the individual possesses on the Government. Within sixty days of the Government’s receipt of the complaint and written disclosures, the Government shall either intervene and proceed with the action, in which case, the action shall be conducted by the Government, or notify the Court that it declines to take over the action, in which case, the private individual bringing the action shall have the right to proceed with the action.

If the Government elects to proceed with the action brought by a private individual, the private individual shall receive at least 15% but not more than 25% of the proceeds of the action or settlement of the claim, depending upon the extent to which the private individual contributed to the prosecution of the action. If the Government does not proceed with the action, and the private individual is successful in the action or settles the action, the private individual is entitled to an amount not less than 25% and not more than 30% of the proceeds of the action or settlement which shall be paid out of the proceeds of the action or settlement. In addition, the private individual is entitled to receive an amount for reasonable expenses necessarily incurred in the action plus reasonable attorneys’ fees and costs. On the other hand, if the private individual is

unsuccessful in prosecuting the action, the Court, upon a finding that the action was clearly frivolous, clearly vexatious or brought primarily for purposes of harassment, may award the defendant in the action its reasonable attorneys' fees and expenses. If the private individual in the action is a person who planned or initiated the violation of the Act, the Court, where appropriate, may reduce the amount of the award to the private individual. Moreover, if such private individual is convicted of a crime arising from his or her role in the violation, the person will not receive any share of the proceeds of the action.

A civil action under the Act may not be brought:

1. More than six years after the date on which the violation of the Act is committed; or
 2. More than three years after the date when facts material to the right of action are known or reasonably should have been known by an official of the Government charged with responsibility to act in the circumstances but in no event more than 10 years after the date on which the violation is committed,
- whichever occurs last.

31 U.S.C. §3801 Et. Seq.

31 U.S.C. §3801 imposes additional civil penalties for the filing of false claims or statements with the federal government. The term "Claim" is defined as:

Any request, demand or submission - -

- (A) made to [the Government] for property, services or money (including money representing grants, loans, insurance or benefits);
- (B) made to a recipient of property, services or money from [the Government] or to a party to a contract with [the Government] - -
 - (i) for property or services if the United States - -
 - (I) provided such property or services;
 - (II) provided any portion of the funds for the purchase of such property or services; or
 - (III) will reimburse such recipient or party for the purchase of such property or services; or
 - (ii) for the payment of money (including money representing grants, loans, insurance or benefits), if the United States - -
 - (I) provided any portion of the money requested or demanded; or
 - (II) will reimburse such recipient or party for any portion of the money paid on such request or demand; or
- (C) made to [the Government] which has the effect of decreasing an obligation to pay or account for property, services or money, except that such term does not include any claim made in any return of tax imposed by the Internal Revenue Code of 1986.

The term "Statement" is defined as any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made - -

- (A) with respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or
- (B) with respect to (including relating to eligibility for - -
 - (i) A contract with, or a bid or proposal for a contract with; or
 - (ii) A grant, loan or benefit from,an authority, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan or benefit, or if the Government will reimburse such State, political subdivision or party for any portion of the money or property under such contract or for such grant, loan or benefit, except that such term does not include

any statement made in any return of tax imposed by the Internal Revenue Code of 1986.

Specifically, civil monetary penalties under 31 U.S.C. §3801 et. seq. will be imposed against:

1. Any person (individual or entity) who makes, presents, or submits, or causes to be made, presented or submitted, a claim that the person knows or has reason to know:
 - (A) is false, fictitious or fraudulent;
 - (B) includes or is supported by any written statement which asserts a material fact which is false, fictitious or fraudulent;
 - (C) includes or is supported by any written statement that:
 - (i) omits a material fact;
 - (ii) is false, fictitious or fraudulent as a result of such omission; and
 - (iii) is a statement in which the person making, presenting or submitting such statement has a duty to include such material facts; or
 - (D) is for payment for the provision of property or services which the person has not provided as claimed; or
2. Any person who makes, presents or submits, or causes to be made, presented or submitted, a written statement that:
 - (A) The person knows or has reason to know:
 - (i) asserts a material fact which is false, fictitious or fraudulent; or
 - (ii) is false, fictitious or fraudulent as a result of such omission;
 - (B) in the case of a statement described in clause (ii) of subparagraph (A) is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact; and
 - (C) contains or is accompanied by an express certification or affirmation of the truthfulness or accuracy of the contents of the statement.

The term “knows or has reason to know” means that:

A person, with respect to a claim or statement - -

- (A) has actual knowledge that the claim or statement is false, fictitious or fraudulent; or
- (B) acts in deliberate ignorance of the truth or falsity of the claim or statement; or
- (C) acts in reckless disregard of the truth or falsity of the claim or statement, and no proof of specific intent to defraud is required.

Civil monetary penalties under 31 U.S.C. §3801 et. seq. are not more than \$11,803.00 for each false claim or statement. Also, in lieu of damages sustained by the federal government, an assessment of not more than twice the amount of such claim(s) may be imposed. An individual or entity against whom civil monetary penalties are sought under 31 U.S.C. §3801 et. seq. is entitled to notice, an opportunity for a hearing and judicial review.

ADDITIONAL CIVIL AND CRIMINAL PENALTIES AND EXCLUSIONS FOR FALSE CLAIMS

In addition to the Act and 31 U.S.C. §3801 et. seq., the federal government may, pursuant to 42 U.S.C. §1320a-7a, impose civil monetary penalties for false claims. Such additional civil monetary penalties may be up to but not exceed \$21,113.00 for each item or service which is the subject of a false claim.

In addition to civil monetary penalties, the federal government may, pursuant to 42 U.S.C. §1320a-7, exclude an individual or entity from participation in federal and state health care programs (including Medicare and Medicaid) for certain false claims or actions. Generally, exclusion is mandatory in cases where the individual is convicted of a felony relating to health care fraud, otherwise, exclusion is permissive, that is, subject to the discretion of the Government.

Pursuant to 42 U.S.C. §1320a-7b, criminal sanctions may be imposed against an individual or entity for making or causing to be made false statements or representations. Specifically, criminal sanctions will be imposed against an individual or entity who:

1. Knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any application for any benefit or payment under a federal health care program;
2. At any time knowingly and willfully makes or causes to be made any false statement or representation of a material fact for use in determining rights to such benefits or payments;
3. Having knowledge of the occurrence of any event affecting (1) his/her initial or continued right to any such benefit, or (2) the initial or continued right to any such benefit or payment of any other individual in whose behalf he/she has applied for or is receiving such benefit or payment, conceals or fails to disclose such event with an intent fraudulently to secure such benefit or payment either in a greater amount or quantity than is due or when no such benefit or payment is authorized;
4. Having made application to receive any such benefit or payment for the use and benefit of another and having received it, knowingly and willfully converts such benefit or payment or any part thereof to a use other than for the use and benefit of such other person;
5. Presents or causes to be presented a claim for a physician's service for which payment may be made under a federal health care program and knows that the individual who furnishes the services was not licensed as a physician; or
6. For a fee knowingly and willfully counsels or assists an individual to dispose of assets (including by any transfer in trust) in order for the individual to become eligible for medical assistance under [Medicaid] if disposing of the assets results in the imposition of a period of ineligibility for such assistance.

In addition, criminal sanctions will be imposed against any individual or entity who knowingly and willfully makes or causes to be made, or induces or seeks to induce the making of, any false statement or representation of a material fact with respect to the conditions or operations of any institution, The Wesley Community or entity in order that such institution, The Wesley Community or entity may qualify (either upon initial certification or upon recertification) as a hospital, critical access hospital, skilled nursing The Wesley Community, nursing The Wesley Community, intermediate care The Wesley Community for the mentally retarded, home health agency, or other entity for which certification is required under Medicare or a state health care program or with respect to information required to be provided under 42 U.S.C. §1320a-3a (disclosure requirements for other providers under Medicare Part B).

NEW YORK STATE FALSE CLAIMS LAWS

A. NY False Claims Act (State Finance Law §§187-194)

The NY False Claims Act closely tracks the federal False Claims Act. It imposes penalties and fines on individuals and entities that file false or fraudulent claims for payment from any state or local government, including health care programs such as 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 have to pay the government's legal fees.

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.

B. Social Services Law, Section 366-b

Section 366-b of the Social Services Law makes it a Class A misdemeanor for any person who, with intent to defraud, does any of the following:

1. presents for allowance or payment any false or fraudulent claim for furnishing services or merchandise;
2. knowingly submits false information for the purpose of obtaining greater compensation than that to which he/she is legally entitled for furnishing services or merchandise; or
3. knowingly submits false information for the purpose of obtaining authorization for furnishing services or merchandise under the Medicaid program.

C. Article 177 of the Penal Law

Article 177 of the Penal Law became effective November 1, 2006. Article 177 of the Penal Law establishes the crime of health care fraud. The crime of health care fraud in the fifth degree is a Class A misdemeanor and a person is guilty of this crime when:

With intent to defraud a health plan, [includes the State Medicaid program], he or she knowingly and willfully provides materially false information or omits material information for the purpose of requesting payment from a health plan for a health care item or service and, as a result of such information or omission, he or she or another person receives payment in an amount that he, she or such other person is not entitled to under the circumstances.

Health care fraud in the fourth degree is a Class E felony. A person is guilty of health care fraud in the fourth degree when the person commits the crime of health care fraud in the fifth degree on one or more occasions and the payment or portion of payment wrongfully received from a single health plan [including Medicaid] in a period of not more than one year, exceeds \$3,000 in the aggregate.

Health care fraud in the third degree is a Class D felony. Health care fraud in the third degree is committed where the wrongful payments exceed \$10,000 in the aggregate in a one-year period. Health care fraud in the second degree is a Class C felony and is committed where the wrongful payments exceed \$50,000 in the aggregate in a one-year period. Health care fraud in the first degree is a Class B felony and is committed where the wrongful payments exceed more than \$1,000,000 in the aggregate one-year period.

Article 177 of the Penal Law provides for an affirmative defense for individuals serving as a clerk, bookkeeper, or other employee of a health care provider who, without personal benefit, was merely executing the orders of his or her employer or a superior employee generally authorized to direct his or her activities. The affirmative defense is not available to any employee charged with the active management and control, in an executive capacity, of the affairs of the corporation.

D. 18 NYCRR Section 515.2

It is an unacceptable practice under the Medicaid program for an individual or entity to submit false claims or false statements to Medicaid. False claims include:

1. Submitting, or causing to be submitted, a claim or claims for:
 - i. unfurnished medical care, services or supplies;
 - ii. an amount in excess of established rates or fees;
 - iii. medical care, services or supplies provided at a frequency or in amount not medically necessary; or
 - iv. amount substantially in excess of the customary charges or costs to the general public; or
2. Inducing, or seeking to induce, any person to submit a false claim.
False statements are:
 - i. Making, or causing to be made, any false, fictitious or fraudulent statement or misrepresentation of material fact in claiming a medical assistance payment, or for use in determining the right to payment; or
 - ii. Inducing or seeking to induce the making of any false, fictitious or fraudulent statement or misrepresentation of a material fact.

Individuals who have engaged in unacceptable practices under the Medicaid program are subject to one or more of the following sanctions:

1. Exclusion from the program for a reasonable time;
2. Censure;
3. Conditional or limited participation, such as requiring pre-audit or prior authorization of claims for all medical care, services or supplies, prior authorization of specific medical care, services or supplies, or other similar conditions or limitations.

In addition, the Department of Health may require the repayment of overpayments determined to have been made as a result of the unacceptable practice.

WHISTLEBLOWER PROTECTION

A. Federal False Claims Act

No employee because of lawful acts done by the employee in furtherance of a civil action under the Act, whether brought by the Government or a private individual, including investigation for, initiation of, testimony for, or assistance in any such action maybe discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of such actions. Any employee who has been discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against in the terms and conditions of employment because of such lawful acts shall be entitled relief necessary to make the employee whole, including, reinstatement with the same seniority status such employee would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

B. **State Laws**

Article 20-C of the New York Labor Law prohibits retaliatory action by employers. Section 740 of Article 20-C applies to all employers. Section 741 of Article 20-C applies to health care employers, including, but not limited to, providers licensed under Article 28 (i.e., hospitals, nursing homes and diagnostic and treatment centers) and Article 36 (i.e., long term home health care programs, certified home health care agencies, and licensed home care service agencies) of the Public Health Law. In addition, the New York False Claims Act provides additional protection to employees.

I. **Section 740**

Under Section 740 an employer is prohibited from taking any retaliatory action (an adverse action taken by an employer or his or her agent to discharge, threaten, penalize, or in any other manner discriminate against any employee or former employee exercising his or her rights under this section, including (i) adverse employment actions or threats to take such adverse employment actions against an employee in the terms of conditions of employment including but not limited to discharge, suspension, or demotion; (ii) actions or threats to take such actions that would adversely impact a former employee's current or future employment; or (iii) threatening to contact or contacting United States immigration authorities or otherwise reporting or threatening to report an employee's suspected citizenship or immigration status or the suspected citizenship or immigration status of an employee's family or household member, as defined in subdivision two of section four hundred fifty-nine-a of the social services law, to a federal, state, or local agency) against an employee because the employee does any of the following:

- (i) discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer that the employee reasonably believes is in violation of law, rule or regulation or that the employee reasonably believes poses a substantial and specific danger to the public health or safety or which constitutes health care fraud;
- (ii) provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any such activity, policy or practice by the employer; or
- (iii) objects to, or refuses to participate in any such activity, policy or practice.

With respect to disclosures to a public body only, protection against retaliatory actions is unavailable unless the employee has made a good faith effort to notify his or her employer by bringing the activity, policy or practice to the attention of a supervisor of the employer and afforded the employer a reasonable opportunity to correct the activity, policy or practice. Such employer notification shall not be required where: (a) there is an imminent and serious danger to the public health or safety; (b) the employee reasonably believes that reporting to the supervisor would result in a destruction of evidence or other concealment of the activity, policy or practice; (c) such activity, policy or practice could reasonably be expected to lead to endangering the welfare of a minor; (d) the employee reasonably believes that reporting to the supervisor would result in physical harm to the employee or any other person; or (e) the employee reasonably believes that the supervisor is already aware of the activity, policy or practice and will not correct such activity, policy or practice.

An employee who has been subject to a retaliatory action may institute a civil action for the following relief within two years after the alleged retaliatory action was taken:

- (i) An injunction to restrain continued violation of Section 740;
- (ii) Reinstatement of the employee to the same position held before the

- retaliatory action, or to an equivalent position; or front pay in lieu thereof;
- (iii) Reinstatement of full fringe benefits and seniority rights;
- (iv) Compensation for lost wages, benefits and other remuneration;
- (v) Payment by the employer of reasonable costs, disbursements and attorneys' fees;
- (vi) A civil penalty of an amount not to exceed \$10,000; and/or
- (vii) Payment by the employer of punitive damages, if the violation was willful, malicious or wanton.

If the Court determines that a civil action under Section 740 was without basis in law or fact, the Court, in its discretion, may award reasonable attorneys' fees and court costs and disbursements to the employer.

II. **Section 741**

Under Section 741, an employer is prohibited from taking retaliatory action (discharge, suspension, demotion, penalization or discrimination against an employee, or other adverse employment action taken against an employee in terms and conditions of employment) against an employee because the employee does any of the following:

- (i) discloses or threatens to disclose to a supervisor, to a public body, to a news media outlet, or to a social media forum available to the public at large, an activity, policy or practice of the employer or agent that the employee, in good faith, reasonably believes constitutes improper quality of patient care ("improper quality of patient care" means any practice, procedure, action or failure to act of an employer which violates any law, rule, regulation or declaratory ruling adopted pursuant to law, where such violation relates to matters which may present a substantial and specific danger to public health or safety or a significant threat to the health of a specific patient) or improper quality of workplace safety ("improper quality of workplace safety" means any practice, procedure, action or failure to act of an employer which violates any law, rule, regulation, or declaratory ruling adopted pursuant to law where such violation relates to matters which may present an unsafe workplace environment or risk of employee safety or a significant threat to the health of a specific employee); or
- (ii) objects to, or refuses to participate in any activity, policy or practice of the employer or agent that the employee, in good faith, reasonably believes constitutes improper quality of patient care or improper quality of workplace safety.

The protections under Section 741 are not available to an employee unless the employee has brought the improper quality of patient care or improper quality of workplace safety to the attention of a supervisor and has afforded the employer a reasonable opportunity to correct such activity, policy or practice. However, the inapplicability of Section 741 for failure to provide an employer an opportunity to correct does not apply to disclosures or threatened disclosures to a supervisor or public body where the improper quality of patient care or improper quality of workplace safety presents an imminent threat to public health or safety or to the health of a specific patient and the employee reasonably believes in good faith that reporting to a supervisor would not result in corrective action.

An employee may bring a civil action under Section 740 for the relief identified in Section 740. In addition to the specific relief identified in Section 740, if the Court determines that a health care employer acted in bad faith in a retaliatory action under Section 741, the Court may assess a civil penalty of an amount not to exceed \$10,000 against the health care employer which is to be paid to the Improving Quality of Patient Care Fund established under the State Finance Law.

III. **NY False Claim Act (State Finance Law §191)**

The False Claim Act also provides protection to *qui tam* relators who are discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of their employment as a result of their furtherance of an action under the 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.

APPENDIX B

ANTI-KICKBACK STATUTE (AKS) [42 U.S.C. § 1320a-7b(b)]

The Anti-Kickback Statute (AKS) is a criminal law that prohibits the knowing and willful payment of "remuneration" to induce or reward patient referrals or the generation of business involving any item or service payable by the Federal health care programs (e.g., drugs, supplies, or health care services for Medicare or Medicaid patients). Remuneration includes anything of value and can take many forms besides cash, such as free rent, expensive hotel stays and meals, and excessive compensation for medical directorships or consultancies. In some industries, it is acceptable to reward those who refer business to you. However, in the Federal health care programs, paying for referrals is a crime. The statute covers the payers of kickbacks – those who offer or pay remuneration – as well as the recipients of kickbacks – those who solicit or receive remuneration. Each party's intent is a key element of their liability under the AKS.

Criminal penalties and administrative sanctions for violating the AKS include fines, jail terms, and exclusion from participation in the Federal health care programs. Under the Civil Monetary Penalties Law, physicians who pay or accept kickbacks also face penalties of up to \$50,000 per kickback plus three times the amount of the remuneration.

Safe harbors protect certain payment and business practices that could otherwise implicate the AKS from criminal and civil prosecution. To be protected by a safe harbor, an arrangement must fit squarely in the safe harbor and satisfy all of its requirements. Some safe harbors address personal services and rental agreements, investments in ambulatory surgical centers, and payments to bona fide employees. For additional information on safe harbors, see "OIG's Safe Harbor Regulations."

Physicians are an attractive target for kickback schemes because they can be a source of referrals for fellow physicians or other health care providers and suppliers. Physicians decide what drugs patients use, which specialists they see, and what health care services and supplies they receive.

Many people and companies want patient business and would pay physicians to receive that business. Just as it is illegal for physicians to take money from providers and suppliers in return for the referral of their Medicare and Medicaid patients, it is illegal for physicians to pay others to refer their Medicare and Medicaid patients.

Kickbacks in health care can lead to:

- Overutilization
- Increased program costs
- Corruption of medical decision making
- Patient steering
- Unfair competition

The kickback prohibition applies to all sources of referrals, even patients. For example, where the Medicare and Medicaid programs require patients to pay copays for services, providers are generally required to collect that money from patients. Routinely waiving these copays could implicate the AKS and providers may not advertise that they will forgive copayments. However, providers are free to waive a copayment if they make an individual determination that the patient cannot afford to pay or if reasonable collection efforts fail. It is also legal to provide free or discounted services to uninsured people.

Besides the AKS, the beneficiary inducement statute (42 U.S.C. § 1320a-7a(a)(5)) also imposes civil monetary penalties on physicians who offer remuneration to Medicare and Medicaid beneficiaries to influence them to use their services.

The Government does not need to prove patient harm or financial loss to the programs to show that a physician violated the AKS. A physician can be guilty of violating the AKS even if the physician actually rendered the service and the service was medically necessary. Taking money or gifts from a drug or device company or a durable medical equipment (DME) supplier is not justified by the argument that physicians would have prescribed that drug or ordered that wheelchair even without a kickback.

APPENDIX C
PHYSICIAN'S SELF-REFERRAL LAW [42 U.S.C. § 1395nn]

The Physician Self-Referral Law, commonly referred to as the Stark law, prohibits physicians from referring patients to receive "designated health services" payable by Medicare or Medicaid from entities with which the physician or an immediate family member has a financial relationship, unless an exception applies. Financial relationships include both ownership/investment interests and compensation arrangements.

"Designated health services" are:

- clinical laboratory services;
- physical therapy, occupational therapy, and outpatient speech-language pathology services;
- radiology and certain other imaging services;
- radiation therapy services and supplies;
- DME and supplies;
- parenteral and enteral nutrients, equipment, and supplies;
- prosthetics, orthotics, and prosthetic devices and supplies;
- home health services;
- outpatient prescription drugs; and
- inpatient and outpatient hospital services.

The Stark law is a strict liability statute, which means proof of specific intent to violate the law is not required. The Stark Law prohibits the submission, or causing the submission, of claims in violation of the law's restrictions on referrals. Penalties for physicians who violate the Stark law include fines as well as exclusion from participation in the Federal health care programs.

APPENDIX D
REPORT OF NON-COMPLIANCE

Report of Potential Non-Compliance

Please complete this form in its entirety. Once submitted, it will be directed to the Director of Corporate Compliance.

Part I

Date and Time of Report

Your Name and Department unless you wish to remain anonymous:

Subject of Report / Parties Involved:

Name of Resident

Name of Employee(s)

Additional People

Date(s) of Alleged Non-Compliance

Location / Department(s) Involved

Witness Name(s) and Department(s) Involved unless witnesses wish to remain anonymous:

Summary of Report

Please attach / upload any additional information or supporting documents.

Part II – To be completed by the Director of Corporate Compliance

Date and Time Report Received

Report Received by

Director of Corporate Compliance

Department Manager / Supervisor

Reporting Mechanism

Online Form

Phone

Dropbox

E-mail

Verbal

Other

Note: The Director of Corporate Compliance will maintain this report in a confidential manner to the extent possible. If you choose to remain anonymous, the Director of Corporate Compliance may not be able to notify you directly of the outcome of any investigation(s) that are undertaken. However, you may contact the Director of Corporate Compliance directly at 518.691.1406 or by e-mailing compliance@thewesleycommunity.org if you have any additional questions.

APPENDIX E
THE CORPORATE COMPLIANCE AND ETHICS PROGRAM CHARTER

<p>Statement of Purpose:</p>	<p>The Wesley Community is committed to:</p> <ul style="list-style-type: none"> • Fostering a culture of integrity, accountability, and ethical behavior; • Implementing processes and procedures that prevent, detect, and correct conduct or practices that are illegal or unethical; • Establishing an environment that encourages employees to report ethical concerns without fear of retaliation; • Identifying and addressing the organization’s primary compliance risks; • Establishing internal controls that promote adherence to laws and regulations; and • Maintaining ethical and transparent business practices.
<p>Scope:</p>	<p>This Charter sets forth the duties and responsibilities and governs the operations of The Wesley Community’s Compliance and Ethics Committee (CEC).</p>
<p>Members:</p>	<p>To ensure that the CEC has the insight, perspective, and full support of the key organizational functions and departments of The Wesley Community, its membership will include the following:</p> <ul style="list-style-type: none"> • Director of Corporate Compliance, Chair • Administrator of Wesley Health Care Center • Assistant Director of Nursing / Grievance Officer • Chief Executive Officer • Chief Strategy Officer • Chief Financial Officer • Director of Admissions • Director of Assisted Living – Woodlawn Commons • Director of Development and Communication • Director of Education • Director of Embury Apartments • Director of Engineering • Director of Environmental Services • Director of Human Resources

	<ul style="list-style-type: none"> • Director of Independent Living – Woodlawn Commons • Director of Information Technology • Director of Inpatient Therapy • Director of Life Enrichment • Director of Maintenance • Director of Nursing • Director of Outpatient Therapies • Director of Pharmacy • Director of Social Services • Executive Administrative Assistant • Manager of Nutritional Services • MDS Coordinator • Purchaser <p>The Chair of the CEC may invite other officers, executives, employees, and/or outside advisors or counsel to attend CEC meetings. Any requests for additional attendees must be approved in advance by the chair.</p> <p>Any individuals appointed as successors to these positions, or to those of other members of the CEC, will serve on the ECC unless the CEO, CSO, and /or Director of Corporate Compliance determines otherwise.</p> <p>In the event that any of the foregoing offices or positions are vacant or otherwise unfilled for more than 90 days, the position on the CEC will be assumed and performed by the officer or employee fulfilling the duties of that office or function, unless the CEO, CSO, and /or Director of Corporate Compliance determines otherwise. Unless the CEO, CSO, and /or Director of Corporate Compliance otherwise directs, immediately upon the termination of their employment with The Wesley Community / Wesley Health Care Center, a member will cease serving on the CEC.</p>
<p>Roles & Responsibilities:</p>	<p>The CEC’s responsibilities include:</p> <ul style="list-style-type: none"> • Overseeing and evaluating of the structure, operations, and effectiveness of the Compliance and Ethics Program; • Promoting the appropriate tone at the top and fully supporting a culture of compliance and ethical behavior and nonretaliation, including effective communication of such throughout the organization;

- Staying abreast of significant developments relating to the compliance expectations from federal and state legislators, regulators, and/or enforcement officials;
- Coordinating appropriate accountability for compliance with the fundamental federal and state legal and regulatory requirements that apply to all facets of The Wesley Community’s mission and work;
- Assisting the Director of Corporate Compliance in ensuring the Code of Conduct and Ethics and compliance-related policies and procedures are complete, periodically revised as necessary, and consistently enforced;
- Ensuring that annual compliance training is developed and conducted, and overseeing an annual compliance training plan addressing key compliance risks;
- Reviewing and approving annually the compliance risk assessment and associated work plan, which includes compliance auditing and monitoring initiatives;
- Reviewing periodically the findings of compliance auditing and monitoring initiatives and ensuring that management develops and timely implements appropriate corrective actions in response to the findings;
- Ensuring that the Compliance and Ethics Program includes a Disclosure Program that has effective open communication channels, including a hotline and web-based options for employees, patients, and third parties to report, in good faith and anonymously, if they wish, all compliance and ethical concerns;
- Assisting the Director of Corporate Compliance in fulfilling compliance reporting obligations to the Board by timely informing the Director of Corporate Compliance of any known audits, reviews, and/or investigations by government agencies; potential overpayments to federal healthcare programs; and employment or engagement of an individual or entity who is currently, or is likely to be, excluded, debarred, suspended, or otherwise declared ineligible to participate in federal healthcare programs or federal procurement or nonprocurement programs;
- Periodically, and no less than annually, assessing the CEC’s oversight of the Compliance and Ethics Program as evidenced by operating in conformance with all Charter requirements; and
- Periodically reviewing and revising, as appropriate, the Charter.

Reports to:	The CEC is a self-governing body. However, CEC activities, initiatives, progress towards goals, and any major compliance-related issues will be reported to The Wesley Community’s Board of Directors.
Subcommittees:	<p>The Director of Corporate Compliance and/or CEC may establish, reorganize, or dissolve permanent or ad hoc subcommittees or working groups. The subcommittees/working groups will work at the direction of and report on their activities to the Director of Corporate Compliance.</p> <p>Subcommittees or working groups will be chaired by the Director of Corporate Compliance or their designee, operate under a defined set of responsibilities, hold scheduled meetings—with such frequency as determined necessary by the subcommittee chair—and keep minutes of subcommittee/working group proceedings. The CEC will assess each subcommittee’s/working group’s effectiveness and structure at least annually.</p>
Critical Interfaces:	<p>The Wesley Community has established the Compliance and Ethics Department, which is led by the Director of Corporate Compliance, who reports to the CEO and to The Wesley Community’s Board.</p> <p>The CEC assists the Director of Corporate Compliance in developing and implementing The Wesley Community’s Compliance and Ethics Program. The Director of Corporate Compliance and the CEC provide employees with guidance regarding compliance with applicable federal and state laws and regulations, Code of Conduct and Ethics, and policies and procedures.</p>
Meetings:	<p>The CEC will meet monthly to ensure that the CEC fulfills its duties and responsibilities collaboratively.</p> <p>Meetings of the CEC may be conducted in person, telephonically, or through a video conference, using The Wesley Community’s approved communications channels, devices, modules, or platforms.</p> <p>All CEC members are expected to attend each meeting, and a quorum representing a majority must be present to transact business.</p>
Meeting Minutes:	Minutes of all meetings will be maintained at the direction of the Chair. Draft minutes will be presented to the Director of Corporate Compliance for review and distribution to the CEC.
Amendments to the Charter:	This Charter may be amended or revised only upon approval by the Director of Corporate Compliance, CEO and/or CSO. The Director of Corporate Compliance shall provide timely notification to the CEC of any proposed amendments or revisions to this Charter.

APPENDIX F
THE WESLEY COMMUNITY'S CORE VALUE PROGRAM



Compassion is demonstrating kindness, care & concern.

Accountability is a commitment, a promise to deliver a result in a given timeframe.

Respect is demonstrating consideration for others needs and feelings.

Excellence is supporting a culture of high performance.

Spirit is working as a team, helping others, being positive and upbeat.

APPENDIX G
COMPLIANCE & ETHICS CERTIFICATION

I certify that I have received the Compliance Manual and that The Wesley Community's Compliance Program, including Standards of Conduct, has been explained to me. I have been given an opportunity to ask questions. I promise to comply with the terms of The Wesley Community's Compliance and Ethics Program, and I understand that violation of these terms may lead to disciplinary action, up to and including the termination of my employment or the termination or non-renewal of staff privileges.

Name: _____
(Print Name)

Signature: _____

Date: _____