ALLEGANY COUNTY
POLICY REGARDING FALSE CLAIMS, FRAUD PREVENTION AND DETECTION

1. GENERAL STATEMENT OF POLICY

1.1 It is the policy of Allegany County hereinafter referred to as “the County”, to comply with all applicable federal, state and local laws and regulations, both civil and criminal.

1.2 It is also the policy of the County to require staff to comply with the County Ethics Code, the Compliance Policy and additional standard of conduct which may be adopted by the County Legislature.

1.3 This policy summarizes the provisions of the County’s Compliance Program and the requirements of the Federal Deficit Reduction Act of 2005, 42 USC s1396(a)(68), and provides information to Allegany County staff about important federal and state laws. The provisions, standards and requirements of the program will be reviewed with each new employee and provided to all employees.

2. SCOPE

2.1 This policy applies to all employees, volunteers, contractors and students in those departments of Allegany County providing Medicaid health care items or services for which Medicaid payments are made.

2.2 This policy also applies to all contractors and agents who furnish or authorize the furnishing of Medicaid services on behalf of the County, or perform billing or coding functions or are involved in monitoring the care provided by the County, hereinafter referred to as “agent.”

3. ADMINISTRATION

3.1 This policy will be implemented and overseen by the Allegany County Corporate Compliance Officer and the Corporate Compliance Committee:

a. John Margeson, County Administrator and Corporate Compliance Officer (CCO)
b. Tom Miner, County Attorney
c. Lori Ballengee, Public Health Director
d. Pat Schmeltzer, Commissioner, Department of Social Services

4. POLICY/PROCEDURE

4.1 Each employee or agent of the County will strive to act in accordance with the provisions of any applicable federal, state and local laws, the County Ethics Code (Attachment #1), and the Compliance Policy, and will encourage other employees or agents to act the same.
4.2 No employee or agent of the County has authority to act contrary to the provisions of any applicable laws, the Ethics Code, or the Compliance Policy or to authorize, direct or condone such action by any other employee or agent.

4.3 Any employee or agent of the County who has knowledge of activities that he or she believes may violate a law, rule or regulation has an obligation, promptly after learning of such activities, to report the matter, in writing, to his or her immediate supervisor. The supervisor will notify the Department Head and this person shall notify the Corporate Compliance Officer. The CCO will initiate an investigation, involving the Corporate Compliance Committee as appropriate. Reports may be made anonymously and employees will not be penalized for reports made in good faith. Failure to report known violations, failure to detect violations due to negligence or reckless conduct and intentionally making false reports shall be grounds for disciplinary action, including termination. The appropriate form of discipline will be case-specific, and in accordance with NYS Civil Service Law and/or existing collective bargaining agreements.

4.4 The County will take steps to communicate its standards and procedures to all employees and agents by disseminating information that explains in a practical manner what is required. This will include distribution of this policy. Employees in the Health Department and any other department that bills Medicaid and/or Medicare, will receive annual training on Medicaid Fraud in November of each year. (Attachment #2) At this time, the employee will take a quiz and must get 8 out of 9 correct. (Attachment #3) For those that do not meet this standard, that employee will take the training again until a score of 8 out of 9 is achieved. The employee shall also sign annually, an attestation that they have received information on reporting of fraud and abuse and consequences of inaction. (Attachment #4) Quiz sheets and attestations will be kept in the employee’s local personnel file.

4.5 The County will take steps to achieve compliance with its standards by utilizing reasonable monitoring and auditing systems designed to detect misconduct by its employees and agents and by having in place and publicizing a reporting system whereby employees and other agents can report misconduct within the County without fear of retribution. Attachment #5 is a working schedule of compliance activities.

4.6 After a suspected violation has been reported, the Corporate Compliance Committee will be notified and will take reasonable steps to respond appropriately and to prevent further similar violations, including any necessary modifications to its program to prevent and detect violations of law.

4.7 All members of the County workforce should be knowledgeable about several important federal and state laws that help to prevent and detect waste, fraud and abuse in federal health care programs such as Medicare and Medicaid. In addition, individuals who, in good faith, report suspected non-complaint behavior are protected by both federal and state law.

4.8 This policy is intended to communicate current policies regarding compliance.

4.9 All contractors and agents who furnish or authorize the furnishing of Medicaid services on behalf of the County, or perform billing or coding functions or are involved in monitoring
the care provided by the County are required to communicate these policies and procedures to their employees and are responsible for making sure that the communication occurs.

5. DISTRIBUTION

5.1 This Policy and Procedure will be distributed to County employees via the County’s shared drive. In addition, hard copies will be provided to new employees during the orientation process and current employees in those departments providing Medicaid health care items or services for which Medicaid payments are made. All such employees will be required to sign a statement of certification that they have been informed of the County policy and procedure upon hire and annually.

5.2 This policy and Procedure will be distributed to all agents of the County who provide Medicaid health care items or services for which Medicaid claims are made by the County as the result of a contract signed by such agents to waive their ability to claim Medicaid reimbursement.
FEDERAL & NEW YORK STATUTES RELATING TO FILING FALSE CLAIMS

I. FEDERAL LAWS

False Claims Act (31 USC §§3729-3733)

The False Claims Act ("FCA") provides, in pertinent part, that:

(a) Any person who (1) knowingly presents, or causes to be presented, to an officer or employee of the United States Government or a member of the Armed Forces of the United States a false or fraudulent claim for payment or approval; (2) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government; (3) conspires to defraud the Government by getting a false or fraudulent claim paid or approved by the Government; . . . or (7) knowingly makes, uses, or causes 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,

*** is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, plus 3 times the amount of damages which the Government sustains because of the act of that person . . . .

(b) For purposes of this section, the terms "knowing" and "knowingly" mean 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.

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

In sum, the False Claims Act imposes liability on any person who submits a claim to the federal government that he or she knows (or should know) is false. An example may be a physician who submits a bill to Medicare for medical services she knows she has not provided. The False Claims Act also imposes liability on an individual who may knowingly submit a false record in order to obtain payment from the government. An example of this may include a government contractor who submits records that he knows (or should know) is false and that indicate compliance with certain contractual or regulatory requirements. The third area of liability includes those instances in which someone may obtain money from the federal government to which he may not be entitled, and then uses false statements or records in order to retain the money. An example of this so-called "reverse false claim" may include a hospital that obtains interim payments from Medicare throughout the year, and then knowingly files a false cost report at the end of the year in order to avoid making a refund to the Medicare program.
In addition to its substantive provisions, the FCA provides that private parties may bring an action on behalf of the United States. 31 U.S.C. 3730 (b). These private parties, known as “qui tam relators,” may share in a percentage of the proceeds from an FCA action or settlement.

Section 3730(d)(1) of the FCA provides, with some exceptions, that a qui tam relator, when the Government has intervened in the lawsuit, shall receive at least 15 percent but not more than 25 percent of the proceeds from the FCA action depending upon the extent to which the relator substantially contributed to the prosecution of the action. When the Government does not intervene, section 3730(d)(2) provides that the relator shall receive an amount that the court decides is reasonable and shall be not less than 25 percent and not more than 30 percent.

**Administrative Remedies for False Claims (31 USC Chapter 38, §§ 3801 – 3812)**

This statute allows for administrative recoveries by federal agencies. If a person submits a claim that the person knows is false or contains false information, or omits material information, then the agency receiving the claim may impose a penalty of up to $5,000 for each claim. The agency may also recover twice the amount of the claim.

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

**II. NEW YORK STATE LAWS**

New York’s false claims laws fall into two categories: civil and administrative; and criminal laws. Some apply to recipient false claims and some apply to provider false claims, and while most are specific to healthcare or Medicaid, some of the “common law” crimes apply to areas of interaction with the government.

**A. CIVIL AND ADMINISTRATIVE LAWS**

**NY False Claims Act (State Finance Law, §§187-194)**

The NY False Claims Act closely tracts 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 of 15-25% if the government did participate in the suit.
Social Services Law §145-b False Statements

It is a violation to knowingly obtain or attempt to obtain payment for items or services furnished under any Social Services program, including Medicaid, by use of a false statement, deliberate concealment or other fraudulent scheme or device. The State or the local Social Services district may recover three times the amount incorrectly paid. In addition, the Department of Health may impose a civil penalty of up to $2,000 per violation. If repeat violations occur within 5 years, a penalty up to $7,500 per violation may be imposed if they involve more serious violations of Medicaid rules, billing for services not rendered or providing excessive services.

Social Services Law §145-c Sanctions

If any person applies for or receives public assistance, including Medicaid, by intentionally making a false or misleading statement, or intending to do so, the person’s, the person’s family’s needs are not taken into account for 6 months if a first offense, 12 months if a second (or once if benefits received are over $3,900) and five years for 4 or more offenses.

B. CRIMINAL LAWS

Social Services Law §145 Penalties

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


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

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

Penal Law Article 155, Larceny.

The crime of larceny applies to a person who, with intent to deprive another of his property, obtains, takes or withholds the property by means of trick, embezzlement, false pretense, false promise, including a scheme to defraud, or other similar behavior. It has been applied to Medicaid fraud cases.
Fourth degree grand larceny involves property valued over $1,000. It is a Class E felony.

Third degree grand larceny involves property valued over $3,000. It is a Class D felony.

Second degree grand larceny involves property valued over $50,000. It is a Class C felony.

First degree grand larceny involves property valued over $1 million. It is a Class B felony.

Penal Law Article 175, False Written Statements.

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

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

§ 175.10, Falsifying business records in the first degree includes the elements of the §175.05 offense and includes the intent to commit another crime or conceal its commission. It is a Class E felony.

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

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

Penal Law Article 176, Insurance Fraud.

Applies to claims for insurance payment, including Medicaid or other health insurance and contains six crimes.

Insurance Fraud in the 5th degree involves intentionally filing a health insurance claim knowing that it is false. It is a Class A misdemeanor.

Insurance fraud in the 4th degree is filing a false insurance claim for over $1,000. It is a Class E felony.
Insurance fraud in the 3rd degree is filing a false insurance claim for over $3,000. It is a Class D felony.

Insurance fraud in the 2nd degree is filing a false insurance claim for over $50,000. It is a Class C felony.

Insurance fraud in the 1st degree is filing a false insurance claim for over $1 million. It is a Class B felony.

Aggravated insurance fraud is committing insurance fraud more than once. It is a Class D felony.

**Penal Law Article 177, Health Care Fraud**

Applies to claims for health insurance payment, including Medicaid, and contains five crimes:

a. Health care fraud in the 5th degree is knowingly filing, with intent to defraud, a claim for payment that intentionally has false information or omissions. It is a Class A misdemeanor.

b. Health care fraud in the 4th degree is filing false claims and annually receiving over $3,000 in aggregate. It is a Class E felony.

c. Health care fraud in the 3rd degree is filing false claims and annually receiving over $10,000 in the aggregate. It is a Class D felony.

d. Health care fraud in the 2nd degree is filing false claims and annually receiving over $50,000 in the aggregate. It is a Class C felony.

e. Health care fraud in the 1st degree is filing false claims and annually receiving over $1 million in the aggregate. It is a Class B felony.

**III. WHISTLEBLOWER PROTECTION**

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

The FCA 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 FCA. 31 U.S.C. 3730(h). Remedies include reinstatement with comparable seniority as the *qui tam* relator would have had but for the discrimination, two times the amount of any back pay, interest on any back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

**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.
New York Labor Law §740
An employer may not take any retaliatory action against an employee if the employee discloses information about the employer’s policies, practices or activities to a regulatory, law enforcement or other similar agency or public official. Protected disclosures are those that assert that the employer is in violation of a law that creates a substantial and specific danger to the public health and safety or which constitutes health care fraud under Penal Law §177 (knowingly filing, with intent to defraud, a claim for payment that intentionally has false information or omissions). The employee’s disclosure is protected only if the employee first brought up the matter with a supervisor and gave the employer a reasonable opportunity to correct the alleged violation. If an employer takes a retaliatory action against the employee, the employee may sue in state court for reinstatement to the same, or an equivalent position, any lost back wages and benefits and attorneys’ fees. If the employer is a health provider and the court finds that the employer’s retaliatory action was in bad faith, it may impose a civil penalty of $10,000 on the employer.

New York Labor Law §741
A health care employer may not take any retaliatory action against an employee if the employee discloses certain information about the employer’s policies, practices or activities to a regulatory, law enforcement or other similar agency or public official. Protected disclosures are those that assert that, in good faith, the employee believes constitute improper quality of patient care. The employee’s disclosure is protected only if the employee first brought up the matter with a supervisor and gave the employer a reasonable opportunity to correct the alleged violation, unless the danger is imminent to the public or patient and the employee believes in good faith that reporting to a supervisor would not result in corrective action. If an employer takes a retaliatory action against the employee, the employee may sue in state court for reinstatement to the same, or an equivalent position, any lost back wages and benefits and attorneys’ fees. If the employer is a health provider and the court finds that the employer’s retaliatory action was in bad faith, it may impose a civil penalty of $10,000 on the employer.

09/30/09
ATTACHMENT #1

RESOLUTION NUMBER 105-70

TITLE: A CODE OF ETHICS AND A BOARD OF ETHICS FOR THE COUNTY OF ALLEGANY

RESOLVED:

1. That proposed Local Law Intro. No. 1-70, Print No. 1 is hereby adopted without any changes in language, to wit:

BE IT ENACTED by the Board of Legislators of the County of Allegany as follows:

ARTICLE I

INTENT OF BOARD OF LEGISLATORS

Section 1. Statement of Legislative Intent. The Board of Legislators of the County of Allegany recognizes that there are state statutory provisions mandating counties to establish rules and standards of ethical conduct for public officers and employees which, if observed, can enhance public confidence in local government. In the light of the tendency today on the part of some people to downgrade our local governments and to discredit our public servants and our free institutions generally, it appears necessary that every effort be made to assure the highest caliber of public administration of this county as part of our state’s important system of local government. It is the purpose of this local law to implement this objective through the establishment of standards of conduct, to provide for punishment of violation of such standards and to create a board of ethics to render advisory opinions to the county’s officers and employees as provided for herein.

Section 2. The standards, prohibited acts and procedures established herein are in addition to any prohibited acts, conflicts of interest provisions or procedures prescribed by statute of the state of New York and also in addition to common law rules and judicial decisions relating to the conduct of county officers to the extent that the same are more severe in their application that this local law.

ARTICLE II

CODE OF ETHICS

Section 1. Definitions. As used in this local law, the term “county” shall mean any board, commission, district, council or other agency, department or unit of the government of the County of Allegany. The term “county employee” shall mean any officer or employee of the County of Allegany whether paid or unpaid, whether serving in a full-time, part-time or advisory capacity.

Section 2. Rule with respect to conflicts of interest. No county employee shall have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest.

Section 3. Standards. A) No county employee shall accept other employment which will impair his independence of judgment in the exercise of his official duties.
B) No county employee shall accept employment or engage in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position or authority.

C) No county employee shall use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others.

D) No county employee shall engage in any transaction as representative or agent of the county with any business entity in which he has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his official duties.

E) A county employee shall not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that her is affected by the kinship, rank, position or influence of any party or person.

F) Each county employee shall abstain from making personal investments in enterprises which he has reason to believe may be directly involved in decisions to be made by him or which will otherwise create substantial conflict between his duty in the public interest and his private interest.

G) Each county employee shall endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

H) No county employee employed on a full-time basis nor any firm or association of which such employee is a member nor corporation a substantial portion of the stock of which is owned or controlled by directly or indirectly by such employee, shall sell goods or services to any person, firm, corporation or association which is licensed or whose rates are fixed by the county in which such employee serves or is employed.

Section 4. Violations. In addition to any penalty contained in any other provision of law, any such county employee who shall knowingly and intentionally violate any of the provisions of this local law may be fined, suspended or removed from office or employment in the manner provided by law.

ARTICLE III

BOARD OF ETHICS

Section 1. There is hereby established a Board of Ethics consisting of five members to be appointed by the Board of Legislators, all of whom reside in the County of Allegany and who shall serve without compensation and at the pleasure of the Board of Legislators of Allegany County. A majority of such members shall be persons other than county employees but shall include at least one member who is an elected or appointed county employee of the County of Allegany.

Section 2. The Board of Ethics established hereunder shall render advisory opinions to county employees on written request and upon request of the Board of Legislators make recommendations to such Board of Legislators as to any amendments of this local law. The opinions of the Board of Ethics shall be advisory and confidential and in no event shall the identity of the county employee be disclosed except to authorized persons or agencies. Such opinions shall be on the advice of counsel employed by the board of ethics, or if none, of the county attorney.

Section 3. Such board of ethics upon its formation shall promulgate its own rules and regulations as to its form and procedures and shall maintain appropriate records of its opinions and proceedings.
ARTICLE IV

ADMINISTRATION

Section 1. Upon the adoption of this local law, the Chairman of the Board of Legislators shall cause a copy thereof to be distributed to every county employee of this county. Failure to distribute any such copy or failure of any county employee to receive such copy shall have no effect on the duty of compliance with this code, nor the enforcement of provisions hereof. The Chairman of the Board of Legislators shall further cause a copy of this local law to be kept posted conspicuously in each public building under the jurisdiction of the county. Failure to so post this local law shall have no effect on the duty of compliance herewith, not the enforcement provisions hereof.

Section 2. Within thirty days of the adoption of this local law, the Clerk of the Board of Legislators shall file a copy thereof in the office of the state comptroller.

Section 3. The Board of Legislators may appropriate moneys from the general county funds for the maintenance of and for personnel services to the board of ethics established hereunder, but such board of ethics may not commit the expenditure of county moneys except within the appropriations provided herein.

ARTICLE V

SEVERABILITY CLAUSE

Section 1. If any clause, sentence, paragraph, section or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

ARTICLE VI

EFFECTIVE DATE

Section 1. This local law shall take effect immediately. Certification of true and correct copy and signature on July 13, 1970.