Variety Child Learning Center
CORPORATE COMPLIANCE PROGRAM

Organization Overview

Variety Child Learning Center (VCLC) is an entity incorporated under the laws of the State of New York and is governed by a Board of Trustees consistent with the provisions of our by-laws and charter.

VCLC is approved by the New York State Education Department to provide special education services and programming pursuant to the provisions of (Section 4401) (Section 4410) of the New York State Education Law and approved by the New York State Department of Health to provide early intervention services pursuant to the provisions of Title II-A of Article 25 of the New York State Public Health Law. VCLC is subject to the following additional laws and regulations:

- Federal Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. §1232g) and regulations thereunder (34 CFR Part 99); and
- Individuals with Disabilities Education ACT (IDEA) and regulations thereunder (34 CFR Part 300).

In accordance with the terms of such state agency approval and consistent with the terms of certain contracts and/or agreements with specific municipalities (or school districts) on whose behalf VCLC provides such approved services, VCLC operates the following program(s) and provides the following services:

- Child care, social skills and enrichment programs (fee-based programs)
- EI services including evaluations, developmental groups, parent and child groups, ongoing service coordination, facility-based therapies and services, home and community special instruction, parent support groups and training, ABA, etc.
- Preschool/special education programs and services including evaluations SCIS, SEIS, SC, RSO, etc.
- School-age special education programs and services including SC, RSO, etc.
- Family Center Respite Center
Mission Statement

Our mission is to:

- Promote the development, education and inclusion into the community of children with or at risk of disabilities

- Increase the capabilities of families whose children have or are at risk of disabilities and reduce the stresses on those families

- Initiate improvements in the delivery of services to children and their families

- Provide training and technical assistance to early childhood personnel

- Promote programs, research, attitudes, policies and collaborations that improve child development and family life
In furtherance of its Mission Statement, Variety Child Learning Center has established a Corporate Compliance Program which promotes an organizational culture that encourages ethical conduct and a commitment to compliance with laws, rules and regulations which govern our operations while enhancing quality services to the children and families we serve. The Program integrates various systems of operations with an emphasis on internal and external audits, reviews, benchmarks and trends, is based on effective and open lines of communications and relies on measurements to assure sustainability and success. The Compliance Program is then incorporated into our operations which are committed to high standards of performance and quality of services.
Compliance Plan, Specifically

Overview

In addition to any other program, policy or procedure relating to the operation of VCLC, VCLC has developed, adopted and implemented a program and plan consistent with the provisions of Title 18 N.Y.C.R.R, Part 521, governing compliance programs for medical assistance providers, the components of which are set out below, including, but not limited to:

- written policies and procedures that describe compliance expectations as embodied in a code of conduct and ethics
- designation of a specific employee vested with responsibility for day-to-day compliance program operation
- training and education of employees and other affected individuals
- communication lines to responsible compliance contacts
- disciplinary policies to encourage good faith compliance program participation
- a system to routinely identify compliance risk areas
- a system for responding to compliance issues as they arise; and
- a policy on non-intimidation and non-retaliation for good faith compliance program participation.

Implementation of Plan

The Compliance Plan (the “Plan”) is effective immediately. All employees, officers, directors, and affected individuals of VCLC shall be provided with a copy of this Plan and will attend annual training at which point they shall be expected to comply with the terms of the Plan. All employees, officers, directors and affected individuals shall be instructed to direct any questions or concerns about the Plan to the Compliance Officer designated below.

Marie M. Colin-Eugene, Compliance Officer
516-921-7171 x 2390
516-368-8306
Code of Conduct and Ethics

Overview

VCLC believes that a well articulated code of conduct and ethics provides the necessary context within which all members of our organization should function - - a context which reflects the duties each individual owes to VCLC and the children and families we serve. Such a code not only provides a framework within which our staff, employees and administrators engage with each other and the students and families we serve, but also provides necessary guidance to employees and other affected individuals on addressing compliance issues through clear written policies and procedures which describe compliance expectations.

The code is designed to be clear, non-technical and easily understood to enhance its effectiveness. It has been approved by the Board of Trustees of VCLC and is reviewed annually thereafter to determine what, if any, modifications or changes are necessary to assure its continued effectiveness.

The Code applies to all employees, officers, directors and affected individuals of the organization. It is intended to elaborate upon and supplement, but not replace, any obligations that otherwise exist under law or regulation, as well as the policies and procedures of applicable governmental agencies and VCLC as provided in VCLC’s employee handbook or other statements. The components of the Code of Conduct and Ethics are as follows:
**Truthfulness**  All employees, officers, directors and affected individuals of VCLC are expected to be truthful at all times in conducting the affairs of VCLC. This includes, but is not limited to, truthfulness in completing internal and external hard-copy and electronic documents on behalf of VCLC, as well as in oral communications both with internal VCLC staff and externally on behalf of VCLC.

The ethics of truthfulness must be reflected in all activities in which individuals associated with VCLC engage, including, but not limited to, the following:

**Record Keeping**  “Records” mean any file, evaluation, report, study, letter, telegrams, minutes of meetings, memorandum, summary, interoffice and intraoffice communication, memorandum reflecting an oral conversation, a handwritten or other note, chart, graph, data sheet, film, videotape, slide, microfilm or microfiche or in computer readable form. Such records include all such materials pertaining to a child’s participation in and the documentation of activities including, but not limited to:

- written correspondence with or regarding the child/family
- notes recording any relevant discussions with parents, other providers, or municipalities regarding the child and family
- documentation of written notice(s) (if any) sent to the parent by the provider, including date of notice
- signed and dated parental consents relevant to service delivery and/or disclosure of information
- Individualized Family Service Plans (IFSPs), Individual Educational Plans (IEPs) and related documents, including amendments
- service authorizations
- documentation demonstrating the provisions of services, including session/progress notes
- group attendance lists
- child/family reports, including evaluations (with relevant medical reports) and ongoing assessments related to the services provided
- physician orders and/or prescriptions; and
- such other record pertaining to the child/family.
Such records must be:

- dated
- accurate and appropriately descriptive of the activity
- contemporaneous with the activity
- free from any alteration; if altered, documentation of the process and reasons therefore
- maintained in the ordinary course of business; and
- maintained, retained and destroyed consistent with professional licensure laws and applicable guidance documents issued by the State Department of Health, New York State Department of Education or any other regulatory agency.
**Confidentiality** The confidentiality of a child’s information is a cornerstone of VCLC’s organizational ethos. All such information shall be treated with discretion, even internally. All disclosures of such information, even to a child’s parent or guardian or other members of the child’s caregiving team, shall be limited to the information necessary to disclose as required by the purpose of the disclosure, and shall at all times be within the limits of applicable laws and regulations, as well as the government’s and VCLC’s policies and procedures. Accordingly, all employees, directors, officers and affected individuals of VCLC are responsible for ensuring the confidentiality of all personally identifiable information in all records, as defined above, consistent with the provision of FERPA and other applicable provisions of law governing the confidentiality of records.

Specifically, the Compliance Officer, or his/her designee, shall:

- be responsible for ensuring the confidentiality of personally identifiable information in a child’s records
- ensure that all records containing personally identifiable information are maintained in secure locations, such as locked fireproof file cabinets or, while traveling, are in a secure brief case or file
- ensure that when records contain information about multiple children, a parent who requests access to his/her child’s record only receives the record(s) pertaining to that child/family
- maintain a record of any individual who accesses children’s records and the purpose for which the record was accessed (with the exception of the parent, employees of municipality, providers of State Department of health staff or designees)
- assure that all employees, directors, officers, affected individuals, contractors, consultants, and volunteers are informed about and are required to adhere to the confidentiality policies and procedures
- adhere to all legal requirements that protect records containing sensitive information (such as sexual or physical abuse, HIV status, treatment for mental illness, the child’s parentage, etc.)
- ensure the confidentiality of all information maintained in an electronic format; and
- should any question arise whether documents containing Medicaid identifying information may be released, contact the New York State Department of Health’s Division of Legal Affairs, Bureau of Medicaid Law at (518) 408-1495, as directed by guidance documents governing confidentiality.
- procedural safeguards to ensure records are not destroyed or altered in any way.
Fraud, Waste and Abuse

Fraud
The American Institute of Certified Public Accountants (AICPA) defines two basic categories of fraud: intentional misstatement of financial information and misappropriation of assets (or theft). Other audit-related organizations provide additional insight into the definition of fraud that can be summarized as follows:

Fraud consists of an illegal act (the intentional wrongdoing), the concealment of this act, and the deriving of a benefit (converting the gains to cash or other valuable commodity).

Legally, fraud can lead to a variety of criminal charges, including theft, embezzlement, and larceny – each with its own specific legal definition and required criteria – each of which can result in severe penalties and a criminal record.

Waste
“Waste” means the thoughtless or careless expenditure, consumption, mismanagement, use, or squandering of resources owned or operated by VCLC to the detriment or potential detriment of the VCLC. Waste also includes incurring unnecessary costs because of inefficient or ineffective practices, systems, or controls. Waste does not normally lead to an allegation of “fraud,” but it could.

Abuse
“Abuse” means the excessive, or improper use of something, or the use of something in a manner contrary to the natural or legal rules for its use; the intentional destruction, diversion, manipulation, misapplication, maltreatment, or misuse of resources owned or operated by the VCLC; or extravagant or excessive use so as to abuse one’s position or authority. “Abuse” does not necessarily lead to an allegation of “fraud,” but it could.

Examples of fraud, waste, and abuse activities include, but are not limited to:

- Forgery or alteration of documents (prescriptions, checks, contracts, purchase orders, invoices, time sheets, leave records, etc.).
- Misrepresentation of information on documents (employment history, time sheets, leave records, travel reimbursement requests, financial records, etc.).
- Billing for unnecessary services or services not provided
- Theft, unauthorized removal, or willful destruction of VCLC records, VCLC property, or the property of other persons (to include the property of employees, customers, or visitors).
- Misappropriation of funds, equipment, supplies, or any other asset.
- Improprieties in the handling and reporting of financial transactions.
• Serious abuse of VCLC’s time such as unauthorized time away from work, falsification of work hours reported, or excessive use of VCLC time for personal business.
• Authorizing or receiving payments for goods not received or services not performed.
• Vendor kickbacks.
• Authorizing or receiving payment for hours not worked.
• Misuse of authority for personal gain.
• Any computer-related activity involving the alteration, destruction, forgery, or manipulation of data for fraudulent purposes.
• Inappropriate use of VCLC-provided electronic devices such as computers, cell phones, or e-mail.

**Responsibilities**

**Employees**

Any VCLC employee who has knowledge of fraud, waste, or abuse, or who has good reason to suspect that such conduct has occurred, shall adhere to the procedures in this Policy.

When suspected fraudulent activity, waste, or abuse is observed by, or made known to, an employee, the employee shall immediately report the activity to the Compliance Officer.

The employee shall not make any attempt to investigate the suspected activity prior to reporting it. The Compliance Officer shall coordinate investigations of fraud, waste, or abuse. The Compliance Officer will contact the Chairman of the Board of Trustees and the Audit/Finance Committee of the Board as well.

An employee shall not destroy, or allow to be destroyed, any document or record of any kind that the employee knows may be relevant to a past, present, or future investigation of fraud, waste, or abuse.
VCLC is committed to conducting all its affairs in accordance with applicable federal and state laws and regulations.
Avoidance of Conflicts of Interest

Purpose

The interests of VCLC and the children and families we serve are superior to the personal interests of any employee, officer, director or agent of VCLC and those interests must be protected when the personal interests of an individual are, or may potentially be, involved in any activity, transaction or arrangement undertaken by VCLC. Accordingly, all employees, officers, directors and affected individuals of VCLC shall avoid even the appearance of any conflict of interest, whether or not such a conflict in fact exists. A conflict of interest exists when there is any motivation or incentive for an employee, officer, director, or agent of Variety Child Learning Center to act in a manner inconsistent with the best interests of VCLC.

Procedures

Duty to Disclose
In relation to the appearance of any conflict of interest, whether or not such a conflict in fact exists, an employee, officer, director or agent must disclose the existence of the interest, financial or otherwise, on forms established therefore, and be given the opportunity to disclose all material facts to the Compliance Officer and such other individuals or committees as set forth in VCLC’s by-laws or operating authority which Compliance Officer and/or other designated individual or committee shall determine whether a conflict of interest exists.

Addressing a Conflict
In its review of the material facts, the Compliance Officer and/or other designated individual or committee may conduct, or have conducted, an investigation of alternatives to the transaction, activity or arrangement under review. Upon due diligence, such officers, individual or committee shall ascertain whether a more advantageous activity, transaction or arrangement exists which would avoid a conflict of interests and proceed accordingly.

Violations
Any violation of the conflict of interest policy shall be subject to disciplinary and corrective action.

Provisions in the Code directing the avoidance of conflict of interest shall supplement any law, rule, regulation, guidance or directive from the State Department of Health or any other regulatory agency including the State Education Department, its “Statement on the Governance Role of a Trustee or Board Member” or similar document, and the Office of the Attorney General and its publications governing the “Internal Controls and Financial Accountability for Not-for-Profit Boards”, and “Right from the Start – Responsibilities of Directors and Officers of Not-for-Profit Corporations” or similar documents, or any provision of any municipal contract through which VCLC provides services relating to conflicts of interest.

By making full and accurate information available about its mission, activities and operations, VCLC demonstrates transparency and thereby, enhanced accountability.
Quality

All employees, officers, directors and affected individuals of VCLC shall pursue the highest quality in the services provided to the children and families we serve. Each individual will adhere to the highest level of professionalism in the conduct of business with and on behalf of VCLC and shall undertake all necessary effort in the successful implementation of a child’s IFSP and the services described therein. All employees, officers, directors and affected individuals of VCLC will conduct themselves with courtesy and respect in all activities associated with VCLC and shall work to assure the highest level of satisfaction with the services provided as measured through communication and dialogue with the child’s parent and other responsible parties.

All employees, officers, directors and affected individuals shall exercise prudent degrees of care, diligence and skill as appropriate to their responsibilities and shall use good judgment in the performance of all activities associated with and on behalf of VCLC.
Non-retaliation

The good faith participation of employees, directors, officers and affected individuals of VCLC is assured and protected by the development and effective implementation of policies of non-intimidation and non-retaliation. Accordingly, no employee, officer, director or agent of VCLC shall intimidate or retaliate in any way against any individual acting in accordance with the Plan.

Prohibitions

More specifically, and consistent with the provisions of sections 740 and 741 of New York State Labor Law, no employee, director, officer or agent of Variety Child Learning Center may take any retaliation action against an employee, director, officer or agency because such individual:

- discloses or threatens to disclose to a supervisor or a public body an activity, policy or practice of VCLC that is in violation of law, rule or regulation which violation creates and presents a substantial and specific danger to the public health or safety, which constitutes health care fraud; or which otherwise constitutes improper quality of care;
- provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into such violation of a law, rule or regulation of such employer; or
- objects to or refuses to participate in any such activity, policy or practice which is a violation of a law, rule or regulation or otherwise reasonably believed to constitute improper quality of care.

Application

The protection provided herein shall not apply to an employee, director, officer or agent who makes such disclosures to a public body unless such individual has brought the activity, policy or practice in violation of law, rule or regulation, or otherwise reasonably believed to constitute improper quality of care, to the attention of a supervisor of VCLC and has offered VCLC a reasonable opportunity to correct such activity, policy or practice, provided, however, that this exemption shall not apply to an action or failure to act where the improper quality of care presents an imminent threat to public health or safety or to the health of a specific child and such employee, director, officer or agent reasonably believes in good faith that reporting to a supervisor or would not result in a corrective action.
Relief

An employee, officer, director or agent of VCLC who has been the subject of a retaliatory personnel action may initiate such legal actions and proceedings and request such relief to the extent provided in sections 740 and 741 of the New York State Labor Law (See Appendix).

Procedures

An employee, officer, director or agent of VCLC who believes they have been the subject of retaliatory personnel action shall report such alleged or suspected intimidation and/or retaliation to the Compliance Officer. The Compliance Officer shall investigate and address such allegation promptly, thoroughly and objectively and may receive assistance from any internal or external resource as the officer deems necessary or appropriate. All documents and relevant materials shall be confidential and shall not be kept in the personnel files of such individual. The Officer shall report frequency and types of alleged intimidation and retaliation as appropriate.
Compliance Officer

Overview

Compliance Oversight

Compliance Officer

While responsibility for compliance rests with each employee, officer, director and agent of VCLC, managerial oversight for compliance rests with the Compliance Officer and Compliance Committee with the ultimate authority residing with the Board.

An effective compliance officer is key to assuring the successful implementation of the compliance plan. Such individual promotes a culture of integrity and informs decision making around service quality and excellence, supported by the resources of the entire organization.

1. VCLC’s Compliance Officer (“CO”) shall be an employee who is a key member of the senior management team, responsible for the day-to-day operation of the compliance plan and may also be employed as Supervisor of Quality Assurance. The Officer shall possess the experience, training and integrity necessary to fulfill the responsibilities of the position. Such training and experience shall be in areas such as compliance and operations, including the business process of compliance and shall reflect an understanding of the laws, regulations and standards applicable to programming.

The CO shall be advised that if his or her other work duties create any conflict with his/her ability to also function as CO, whether due to a conflict of interest or as a result of time limitations, the CO shall simultaneously report same to VCLC’s Chief Executive Officer (“CEO”) and the Chair of VCLC’s Board of Trustees (“Board”). The CO shall have direct access to the CEO, CFO, and the Board.

2. The CO’s duties shall include, but not be limited to:
   • providing appropriate guidance to departments within the organization and to the management relating to the meeting of statutory and regulatory obligations
   • periodically attending education conferences, meetings or seminars designed to enhance his/her understanding of the effective development and implementation of the compliance program and identification and management of risk areas
   • promoting compliance of and adherence to VCLC’s Code of Conduct and all applicable rules, regulations and laws
   • facilitating communication and activities throughout the organization on compliance related issues
   • monitoring federal and state agency websites (e.g., OIG and OMIG) for guidance, reports, and other publications indicating potential areas of weakness in compliance
• accessing resources within and without VCLC to effectively design, implement and monitor the compliance program which shall include information about VCLC’s organization and operations to best assess compliance and to identify weak areas. Accordingly, the CO shall have access to all relevant documents, systems and records necessary to fulfill his/her obligations and duties
• securing support from the CEO, CFO and Board of Trustees for compliance initiatives including incentivizing the reporting of compliance concerns and assuring no retaliation for such reporting activities
• revising the Compliance Program, including the Code of Conduct, as deemed necessary and appropriate to reflect changes to applicable laws and regulations
• accessing outside counsel and consultants where necessary and appropriate
• developing and ensuring the effective implementation of a confidential system through which employees, officers, directors and affected individuals of VCLC may express compliance concerns, and those concerns are appropriately addressed
• identifying patterns or issues related to compliance
• investigating expressed concerns of compliance; and
• substantiating the fulfillment of his/her duties and responsibilities through appropriate documentation.

3. The CO shall report regularly on compliance matters to VCLC’s CEO and the administrative Compliance Committee. The CO shall also appear at a minimum of one meeting of the Board of Trustees (the “Board”) annually, at which time he/she shall present compliance activities undertaken on behalf of VCLC to the Board.

**Compliance Committee**

The Compliance Committee shares oversight responsibilities with the CO and provides support to the compliance program. The Committee shall include senior management individuals and shall meet at least quarterly with the CO to share with the CO their individual assessments in their areas of expertise and to assist in identifying risk areas.
Training and Education

Overview

The effectiveness of the Compliance Plan is further enhanced by the provision of training to all employees and affected individuals to assure accurate, reliable and consistent information which will lead to improved compliance.

1. All employees, officers, directors and affected individuals of VCLC shall receive training on VCLC’s policies and procedures and specifically, the Plan, as well as the expectations of VCLC’s management with respect to compliance with the Plan, at the time of hire or at such other time as such individual commences activities on behalf for or the benefit of VCLC.

2. All employees, officers, directors and affected individuals of VCLC shall also receive training at least annually on (i) the Plan, including its operation as well as the expectations of VCLC’s management with respect to compliance with the Plan; and (ii) such other compliance issues as the CO deems timely and appropriate at the time of the training.

3. Training provided in furtherance of the Plan shall be provided by qualified individuals and shall contain the following components:

- training shall be mandatory and carry sanctions for failure to attend or participate
- training materials shall be annually evaluated, consider relevant audits and investigations, include a variety of teaching methods, be provided in different languages (where appropriate) and be developed at appropriate reading levels
- training information shall be disseminated through a variety of means, including, but not limited to, newsletters, notices, posters, FAQs and intranet sites and may occur at regular staff meetings
- training and education shall be tied to changes in applicable laws, regulations and policies
- training shall address identified or potential weaknesses in current operations, including the development and implementation of corrective action plans when necessary
- training shall explain the importance of complying with applicable laws, rules and regulations and convey VCLC’s commitment to compliance and high standards of integrity
- training shall include legal requirements relating to the False Claim Act and related laws (See Appendix)
- training shall include review of disciplinary policies which encourage good faith participation in the compliance program; and
- employees, directors, officers and affected individuals who receive training shall be informed of when and how to obtain additional assistance
All training shall be documented by sign-in sheets reflected in the minutes from meetings and/or tracked electronically.
Compliance Reporting Mechanisms

Overview

Open lines of communication are the cornerstone of an effective compliance plan -- a culture that encourages questioning and assures meaningful responses.

Communication Lines to the Compliance Officer

The Compliance Officer shall be wholly accessible to all employees, directors and affected individuals of VCLC and the lines of communication to him/her will be open and inviting. Reporting of compliance concerns shall be encouraged through the conspicuous posting of such officer’s contact information in high traffic areas, on intranet websites and in newsletters or other mechanisms of communication, and through inclusion in new staff orientation material and compliance training information.

1. All employees, officers, directors and affected individuals of VCLC shall immediately report any suspected or known violations or violation of law, regulation or the Plan. Such report should typically be made to such individual’s direct supervisor/coordinator, who shall then convey the report to the CO. If such supervisor/coordinator receives such report orally, he or she shall make the report to the CO in writing and shall identify the individual originally having made the report, unless such individual has requested anonymity. Anonymous reports will be received and disposed in a manner that protects anonymity while allowing a meaningful assessment of the concern, whether through an independent reporting path, or some similar means.

2. If, under the circumstances, an employee, officer, director or agent wishes not to or cannot practically make such report to his or her direct supervisor, such individual may:

   (a) make such report directly to the CO; or

   (b) make such report via voicemail left on the CO’s extension or designated private line at (516) 368-8306

3. The CO shall document in writing any report received pursuant to the Plan.
**Response to Compliance Concerns**

**Overview**

A well articulated process of response to compliance issues is essential to assuring compliance with the applicable policies, laws and rules and regulations, whether such issues are raised by individuals or identified in the course of self-evaluations and audits. Accordingly, VCLC has developed the following policies and procedures to assure that compliance concerns are corrected promptly and thoroughly and that policies and procedures are adjusted and modified to prevent any re-occurrence.

1. Upon receiving a report from any source as to suspected or actual violation of law, regulation or the Plan, the CO shall conduct such investigation as he/she shall deem necessary in order to determine whether the report is accurate or not. The CO may involve the CEO and CFO in designing such investigation and/or securing the resources necessary to conduct such investigation, if deemed appropriate by the CO. In the event involvement of the CEO and CFO would create or exacerbate any potential or actual conflict of interest in judgment of the CO, the CO may instead seek the involvement of the Chair of the Board.

2. The confidentiality and anonymity of any individual filing a report pursuant to the plan shall be safeguarded to the maximum degree reasonably feasible subject to the obligations imposed by the Plan.

3. At the conclusion of such investigation, the CO shall render a determination in writing as to whether such reported violation has been substantiated or not. Such report shall also include the following information to the determination of the CO:

   (a) A statement of any steps required to remediate any consequences of any substantiated violation; and

   (b) A recommendation as to any modifications to VCLC’s policies and/or procedures that should be made to prevent the recurrence of any substantiated violation.

4. The CO shall present such written determination to the CEO or the Chair of the Board if the CEO or CFO are subjects of the written documentation.

5. The CO and the CEO and CFO (or chair of the Board, if appropriate) shall determine whether any further disclosures are warranted, including, but not limited to, any disclosures to any government agency.


**Policies that Encourage Participation**

Employee and affected individuals meaningful participation in the Plan shall be encouraged through well-articulated incentives which shall include, but not be limited to, the inclusion of compliance responsibilities in performance plans and evaluations and the inclusion of compliance goals in department head performance plans relevant to such individual’s specific function.
Disciplinary Policies

Overview

Meaningful participation in the Plan is also encouraged through clear, fair and consistent disciplinary policies supported by clearly articulated sanctions. Expectations for reporting compliance issues are, therefore, reinforced through succinct disciplinary protocols. At the core, all employees, officers, directors and affected individuals have an underlying obligation to participate in good faith in investigations of compliance concerns, to be truthful with investigators and to preserve documentation or records relevant to investigations.

1. The following shall be deemed violations of VCLC’s policies and shall warrant disciplinary action consistent with such policies:

   (a) violating any law, regulation or the Plan while conducting the affairs of VCLC;
   (b) encouraging, facilitating, or permitting actively or passively any violation of law, regulation or the Plan by another individual conducting the affairs of VCLC;
   (c) failing to report any suspected violation of law, regulation or the Plan by anyone conducting the affairs of VCLC;
   (d) failing to cooperate in any investigation undertaken by the CO in accordance with the Plan;
   (e) encouraging, directing, facilitating or permitting non-compliant behavior; and
   (f) retaliating in any way against any individual making a report, cooperating with any investigation, or otherwise acting in accordance with the Plan.

2. Without in any way limiting the foregoing, no individual filing a good faith report pursuant to the Plan shall be subject to any form of discipline or adverse action by reason of filing such report, irrespective of the outcome of the CO’s investigation of same.

3. All sanctions imposed under the disciplinary policies shall be consistent with past practices for similar violations.
Compliance Risk Areas

As of the date on which the Plan was prepared or revised, the following compliance risk areas have been identified as areas where the CO should perform affirmative monitoring from time-to-time, including, but not limited to, internal or external auditing and evaluation of potential or non-compliance as a result of such self-evaluations as the CO deems appropriate:

- Billing
- Payments
- Medical necessity and quality of care
- Governance
- Mandatory reporting
- Credentialing; and
- Other risk areas that are or should be identified with due diligence, as such risk areas relate to VCLC’s operations.

Routine Identification of Risk Areas

The CO shall, in consultation with department heads, program supervisors and other such individuals as he/she deems appropriate, and upon review of applicable guidance materials and other industry standards, routinely identify such compliance risk areas which shall be assessed based upon review of applicable state work plans and audits, internal and external reviews, benchmarks and trends and general industry guidance. More specifically, the CO shall conduct, or have conducted, internal audits with sufficient frequency and thoroughness to effectively identify non-compliance according to an audit plan which is:

- developed at least annually, and revised as necessary
- assesses compliance data from the previous year (audits, statistics, etc.), to identify high risk areas for the coming year (trend tracking)
- identifies corrective action plan that requires auditing to confirm compliance; and
- includes measurements, timetables and individuals responsible for addressing each risk area

Such audit findings shall be analyzed to identify non-compliance through comparison with publicly available statistics and prior audits and identification of trends and other appropriate metrics identified in advance of the audit. Audit results will be shared with the CEO, and the Board of Trustees.

Provisions Specific to Billing

In furtherance of VCLC’s Code of Ethics which demands integrity in all business operations, great attention must be given protocols governing billing and claims for reimbursement as areas of greatest/risk for non-compliance.
Accordingly, the following components are integrated into the Code of Conduct to which each employee, officer, director and agent is bound and shall be the focus of the CO’s compliance review:

- Employees, directors, officers or affected individuals who perform billing responsibilities must take reasonable precautions to confirm that their work is accurate, timely and comports with all applicable laws, rules and regulations
- No employee, director, officer or agent shall submit any claims for payment or reimbursement that is false, fraudulent, inaccurate or fictitious; and
- Services identified in a child’s IFSP/IEP shall be billed.

Any employee, director, officer or agent who has compliance concerns around any billing component or procedure shall report such concerns to the supervisor and/or CO.

**Provisions Specific to Credentials**

In furtherance of VCLC’s Code of Conduct, VCLC shall confirm and verify the appropriate credentialing and/or licensure of all employees and affected individuals consistent with applicable laws, rules and regulations and municipal contracts.
A rather comprehensive body of law has been developed to prevent fraud and abuse within the health care industry, particularly, and to ensure quality of care. This body of law includes, but is not limited to:

- The Federal False Claims Act;
- Federal administrative remedies for false claims and statements (31 U.S.C. §3801 et seq);
- State laws pertaining to civil or criminal penalties for false claims and statements;
- Federal and State “Whistleblower” protections; and
- Required fraud and abuse training (10 NYCRR §98-1.21)
FEDERAL AND STATE LAWS

RELATING TO
FILING FALSE CLAIMS

(Source: OMIG website http://www.omig.state.ny.us/data/content/view/81/206)


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,

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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 who 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 of the FCA action depending upon the extent to which the relator substantially contributed to the prosecution of the action. When the Government does not intervene, section 3730(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 tines 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.

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

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

b. Any person who, with intent to defraud, presents for payment 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 this property, obtains, takes orWithholds 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.

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

Penal Law Article 175, False Written Statements.

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

a. §175.05, Falsifying business records involves entering false information, omitting material information or altering an enterprise’s business records with the intent to defraud. It is a Class A misdemeanor.
b. § 175.10, Falsifying business records in the first degree includes the elements of the §175.05 offense and includes the intent to commit another crime or conceal its commission. It is a Class E felony.
c. §175.30, Offering a false instrument for filing in the second degree involves presenting a written instrument (including a claim for payment) to a public office knowing that it contains false information. It is a Class A misdemeanor.
d. §175.35, Offering a false instrument for filing in the first degree includes the elements of the second degree offense and must include an intent to defraud the state or a political subdivision. It is a Class E felony.

Penal Law Article 176, Insurance Fraud.

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

a. Insurance Fraud in the 5th degree involves intentionally filing a health insurance claim knowing that it is false. It is a Class A misdemeanor.
b. Insurance fraud in the 4th degree is filing a false insurance claim for over $1,000. It is a Class E felony.

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

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

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

f. 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.

IV. REQUIRED FRAUD AND ABUSE TRAINING

_Pursuant to Public Health Law section 4414, every MCO that participates in public or government sponsored programs with an enrolled population of 10,000 or more persons in the aggregate in any given year shall develop and file with the commissioner within 180 days of the effective date of these regulations a plan for the detection, investigation and prevention of fraudulent activities in this state and those fraudulent and abusive activities affecting policies or state or local department of social services contracts issued or issued for delivery in this state. The plan must include written policies, procedures and standards of conduct that are distributed to all affected employees and appropriate delegated entities, and that articulate the MCO’s commitment to comply with all applicable federal and state standards and identify and address specific areas of risk and vulnerability. The MCO must designate an officer or director who has responsibility and authority for carrying out provisions of the plan, and who reports directly to senior management. Any MCO that has filed and implemented such a plan with the superintendent in compliance with Section 409 of the Insurance Law is exempt from the requirements of this section._
UNDERSTANDING FEDERAL AND STATE LAWS
GOVERNING FALSE CLAIMS

THE FEDERAL FALSE CLAIMS ACT
(31 U.S.C. §3729-3733)

The federal False Claims Act (FCA), dating back to the Civil War, is designed to encourage individuals to come forward with their private attorneys to uncover fraud and prosecute such offenses on behalf of the federal government by rewarding “whistleblowers” with a percentage of the recovery.

Such a “qui tam” lawsuit allows private citizens to sue for themselves, as well as on behalf of the federal government against which the fraud has been perpetrated. The Act has been revitalized to ferret out general waste and misuse of federal dollars, especially in the Medicare program.

Under the FCA, a person may bring an action in the name of the federal government against any individual who, in part,

- knowingly presents, or causes to be presented, to a representative or employee of the federal government, a false or fraudulent claim for payment or approval; or
- knowingly makes or uses, or causes to be made or used, a false record or fraudulent claim paid or approved by the federal government; or
- conspires to do the same; or
- has possession or control of property or money used by the federal government and, intending to defraud the government, willfully conceals or causes to be delivered less property than the amount received for such property;
- Knowingly makes or uses or causes to be made or used, any false record or statement to conceal, avoid or decrease an obligation to the federal government.

A person has acted “knowingly” under the FCA when such person:

- has actual knowledge of the information;
- acts in deliberate ignorance of the truth or falsity of the information; or
- Acts in reckless disregard of the truth or falsity of the information.

Specific intent to defraud is not, therefore, a necessary requirement.

While providing a fiscal incentive to “disclose,” the “FCA” also affords “whistleblowers” a variety of protections against intimidation or retaliation. Any employee who is discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against in the terms and conditions of employment as a result of the employee’s fraudulent acts or the
employee’s participation in the proceedings is entitled to the appropriate relief which may include reinstatement, special damages, and twice back pay, with interest.
Several states, including New York, Massachusetts, New Hampshire and Rhode Island, as well as municipalities such as New York City, have their own versions of the Federal False Claims Act with its “private recovery” or “qui tam” provisions.

The provisions of the NYSFCA are closely aligned with the federal FCA provisions including the definition of “knowing and knowingly” and the list of violative conduct and offenses. The state FCA, however, extends to offenses against local governments including any county, city, town, village, school district, BOCES, local public benefit corporation or other municipal corporation or political subdivision of the State, as well.

Either the state’s attorney general may bring a civil action on behalf of the people of the State of New York or local government under the state FCA, or, as under the federal FCA, any person may bring a “qui tam” civil action in his/her own right and receive a percentage of the recovery, accordingly.
NEW YORK CITY FALSE CLAIMS ACT
Local Law No. 53 (2005)

New York City has created its own civil penalties and private right of action for false or fraudulent claims, modeled on the federal False Claim Act.
An essential element of New York State’s laws providing “assistance, care and services” are a series of complementary provisions designed to prevent fraud and abuse in the receipt of such public assistance or care.

The state’s Social Services Laws govern public assistance and provide both general and specific penalties for the making of false statements or representations, or concealing of information. Social Services Law, §145, criminalizes such activities, making them misdemeanors.

Some provisions, such as Social Services Law, §145-b, not only criminalize the conduct, but authorize the recovery of civil damages against the violator equal to three times the amount by which any figure is falsely overstated, or times damages available. Demands for repayments or refunds back to the state or federal government relative to the federal Medicaid program (Title XIX of the Federal Social Security Act, 42 U.S.C.A. §1396 et seq) shall also bear interest.

Section 145-b also authorizes the State Department of Health to impose monetary penalties as restitution to the Medical assistance program (Medicaid) upon any person who:

- fails to comply with Medicaid requirements; or
- generally accepted medical practice on a substantial number of cases; or
- grossly and flagrantly violates such standards and receives, or causes to be received by another person, Medicaid payments

Each of these provisions is in addition to the wealth of crimes and misdemeanors around false documentation and theft, in general, found in the state’s Penal Laws.
Acknowledgement of Receipt of Compliance Plan for
Variety Child Learning Center (VCLC)

I, _____________________________[PRINT NAME], acknowledge that I have received, read, and understand the Compliance Plan for VCLC (the “Plan”) and that I will abide by its terms.

I understand that I may address any questions or concerns regarding the Plan to VCLC’s Compliance Officer. I am aware that I may make an anonymous report of a suspected or actual violation of law, regulation or the Plan.

Signature: ____________________________

Name: ________________________________

Title: ________________________________

Date: ________________________________

Revised January 18, 2019