



**CORPORATE COMPLIANCE  
GUIDELINES HANDBOOK  
FOR  
VENDORS/CONTRACTORS/CONSULTANTS/OTHER  
PAID AGENTS  
AND  
THEIR EMPLOYEES**

Revised March 2012<sup>1</sup>

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<sup>1</sup> Original issue date = November 2008; only change is updated contact information on Page 3

# **Corporate Compliance Guidelines For Vendors/Contractors/Consultants/Other Paid Agents And Their Employees**

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**COMPLIANCE GUIDELINE #1**

**CONTACT INFORMATION**

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**IF YOU HAVE A QUESTION OR CONCERN ABOUT  
WHAT IS THE RIGHT THING TO DO, OR IF YOU  
BECOME AWARE OF ANY CONDUCT YOU SUSPECT  
MAY BE WRONGFUL, PLEASE CONTACT ONE OF THE  
ABOVE OR CALL:**

**THE SHIELD TOLL-FREE NO-CALLER ID COMPLIANCE  
HELPLINE**

**1 (877) 547-6402**

***NO ONE WILL BE RETALIATED AGAINST FOR THE GOOD FAITH  
REPORTING OF A CONCERN, EVEN IF IT SHOULD TURN OUT  
THAT THE SUSPECTED CONDUCT WAS PROPER.***

## COMPLIANCE GUIDELINE #2

### GENERAL COMPLIANCE PHILOSOPHY

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#### **GENERAL PRINCIPLES**

##### **Policy**

It has been and continues to be the policy of The Shield Institute to comply with all applicable federal, state and local laws and regulations, and payer requirements. It is also The Shield Institute's policy to require all of its members (its Directors, Officers, employees, interns, and volunteers) to adhere to **The Shield Institute Code of Conduct**. Further, it is The Shield's Institute's policy to require, as a condition of doing business with the Agency, that every vendor/contractor/consultant/other paid agent and each of its employees who perform services for The Shield Institute agree to adhere to substantive requirements of The Shield Institute Corporate Compliance Program, including **The Shield Institute Code of Conduct**.

##### **Commitment**

We have always been and remain committed to our responsibility to conduct our business affairs with integrity based on sound ethical and moral standards. We will hold our employees, vendors, contractors, consultants, other paid agents and their employees to these same standards.

The Shield Institute is committed to maintaining and measuring the effectiveness of our Compliance policies and standards through monitoring and auditing systems reasonably designed to detect noncompliance by its employees and agents. We shall require the performance of regular, periodic compliance audits by internal and/or external auditors who have expertise in federal, state, and local health care statutes, regulations, and health care program requirements.

##### **Responsibility to Report Suspected or Known Non-Compliance – General**

Every vendor, contractor, consultant, other paid agent and each of its employees who perform services for The Shield Institute shall acknowledge that it is its/his/her responsibility to report any suspected instances of suspected or known noncompliance retaliation or retribution (and can even do so anonymously if it/he/she prefers).

##### **Responsibility – False Claims Act & Whistleblower Protections**

The Shield Institute is committed to prompt, complete, and accurate billing of all services that are provided to individuals. Neither The Shield Institute and its employees nor any Shield vendors/contractor/consultant/agent and its employees shall make or submit any false claims or engage in any arrangement at the direction of another person (including, but not limited to any

Shield supervisor or manager), which results, directly or indirectly, in the submission of a false claim by The Shield Institute.

It is the policy of The Shield Institute to detect and prevent fraud, waste and abuse in federal healthcare programs and, more broadly, to prevent any violations of federal or New York State laws regarding fraud or abuse in its health care programs.

### **Policies and Procedures**

The Shield Institute will communicate its compliance standards and policies to its vendors/contractors/consultants/other paid agents and their employees through distribution of **The Shield Corporate Compliance Guidelines Handbook for Vendors/Contractors/Consultants/Other Paid Agents and Their Employees**, and particularly our **Code of Conduct**.

### **Enforcement**

**Failure to Report**--Failure by any vendor/contractor/consultant/other paid agent and/or any of its employees to report known noncompliance by either The Shield Institute or any person or entity acting on behalf of The Shield Institute, or making a report other than in good faith will be grounds for The Shield Institute to terminate the ongoing services of the particular vendor/contractor/consultant/other paid agent and/or its employee and to take other appropriate remedial action.

**Making or Submitting False claims**—Should any Shield vendor/contractor/consultant/other paid agent and/or any of its employees make or submit any false claims or engage in any arrangement at the direction of another person (including, but not limited to any Shield supervisor or manager), which results, directly or indirectly, in the submission of a false claim by The Shield Institute, such action will be grounds for The Shield institute to terminate the ongoing services of the particular vendor/contractor/consultant/other paid agent and/or its employee and to take other appropriate remedial action.

This Compliance Policy will be consistently enforced.

### **Expectations**

Every Shield vendor/contractor/consultant/other paid agent and every one of its employees who performs services for The Shield Institute are expected to be familiar and knowledgeable about The Shield Institute's Compliance Program and have a solid working knowledge of its/his/her responsibilities pursuant to the program by having reviewed **The Shield Institute Corporate Compliance Guidelines Handbook For Vendors/Contractors/Consultants/Other Paid Agents And Their Employees**.

## **Effective Confidential Communication**

### **Expectations**

An open line of communication between The Shield Institute Compliance Officer and every Shield vendor/contractor/consultant/other paid agent and every one of its employees who performs services for The Shield Institute is essential to the success of our Compliance Program.

*Every vendor/contractor/consultant/other paid agent and its employees have an obligation to refuse to participate in any wrongful course of action and to report the actions according to the procedure listed below.*

Under the **federal False Claims Act**, anyone who “*knowingly*” submits false claims to the federal Government is liable for damages up to three times the amount of the erroneous payment plus mandatory penalties of \$5,000 to \$10,000 for each false claim submitted. (The **New York State False Claims Act** creates similar penalties for the submission of false claims to the State.) The definition of “*knowingly*” includes not only a person who has actual knowledge to falsify information in the claim, but also one who acts in deliberate ignorance of the truth or falsity of information in the claim and/or in reckless disregard of the truth or falsity of the information in a claim.

Some examples of conduct which leads to the submission of a false claim include:

- Knowingly making false statements;
- Falsifying records;
- Submitting claims for services never performed or items never furnished;
- Double-billing for items or services;
- Using false records or statements to avoid paying the Government;
- Falsifying time records used to bill Medicaid; or
- Otherwise causing a false claim to be submitted.

### **Kinds of Concerns that Must be Reported**

The Shield Institute’s internal controls and operating procedures are intended to detect and to prevent or deter improper activities. However, even the best systems of control cannot provide absolute safeguards against irregularities. Intentional and unintentional violations of laws, regulations, policies and procedures may occur and may constitute improper activities. Examples of intentional and unintentional noncompliance activities are violations of federal, state or local laws; billing for services not performed or for items not delivered; and other fraudulent financial reporting.

*Every Shield vendor/contractor/consultant/other paid agent and its employees have a responsibility to report any suspected improper activities to appropriate parties.*

### **Where to Report Suspected Violations**

Any individual who suspects that a Shield employee (including a supervisory or managerial employee), intern, volunteer, vendor, contractor, consultant, or agent has violated **The Shield Institute Code of Conduct**, Compliance Guidelines, policies, procedures, or any applicable state or federal law, must immediately report his/her suspicion to either The Shield's Assistant Executive Director, Associate Executive Director, Executive Director, Director of Human Resources, Compliance Officer, or the **Shield Institute Toll-Free No-Caller-ID Compliance Helpline (1 (877) 547-6402)**. An individual, who for any reason is uncomfortable in disclosing his or her own identity while reporting a suspected violation may call **The Shield Institute Toll-Free No-Caller ID Compliance Helpline** anonymously or send an anonymous note to The Shield's Compliance Officer (post office address: Compliance Officer, The Shield Institute, 144-61 Roosevelt Avenue, Flushing, New York 11354; e-mail address: [complianceofficer@shield.org](mailto:complianceofficer@shield.org) ).

### **Who will investigate suspected violations?**

The Shield Institute Compliance Officer will promptly and thoroughly personally investigate and/or supervise the investigation of any suspected violation in as confidential a manner as possible. The objective of such an inquiry will be to determine whether a Corporate Compliance issue exists, and/or whether there has been a violation of the **Code of Conduct** or applicable legal rules and regulations. If an issue or violation does exist, then the inquiry will attempt to determine its cause, so that appropriate and effective corrective action can be taken. If there is evidence of negligence or intentional misconduct on the part of anyone, then the Compliance Officer will consult with the Director of Human Resources Director and the Executive Director to determine appropriate disciplinary and/or corrective action that may be warranted.

### **“Whistleblower” Protections**

No innocent vendor/contractor/consultant/other paid agent or its innocent employee who reports a suspected violation of the **Code of Conduct**, Compliance Guidelines or who participates in an investigation of an alleged violation will suffer any retaliation or reprisal by The Shield Institute for such report or participation (see Whistleblower Protection policy and procedures).

The Shield will, if requested, make every reasonable effort to keep confidential the identity of a reporter to the extent permitted by law and except if doing so would effectively prevent The Shield from conducting a full and fair investigation of the allegations. In every instance, however, every reporter who acts in good faith will be protected against retribution by The Shield Institute or by anyone employed by The Shield Institute regardless of whether the allegations are ultimately determined to be without merit. Any Shield employee who threatens of or attempts a reprisal against a person who acts in good faith to report a suspected violation will be subject to disciplinary action up to and including termination of employment. Should any Shield vendor/contractor/consultant/other paid agent threaten or attempt a reprisal against any person (including, but not limited to an employee of that vendor/contractor/consultant/paid agent) who acts in good faith to report a suspected violation, such action will be grounds for **The Shield Institute** to terminate the ongoing services of the particular vendor/contractor/consultant/other paid agent and take other appropriate remedial actions.

## **Guidance**

Any Shield vendor/contractor/consultant/other paid agent and any of its employees performing services for The Shield may seek guidance with respect to the Compliance Plan or **Code of Conduct** at any time by contacting the Compliance Officer.<sup>2</sup>

## **Enforcement of Compliance Standards**

### **Auditing and Monitoring of Compliance Activities**

#### **Internal Audits**

Ongoing evaluation is critical in detecting non-compliance and will help ensure the success of The Shield Institute's Compliance Program. An ongoing auditing and monitoring system, implemented by the Compliance Officer, in consultation with the Corporate Compliance Committee, is an integral component of our auditing and monitoring systems. This ongoing evaluation shall include the following:

- Review of relationships with third-party contractors, specifically those with substantive exposure to government enforcement actions;
- Compliance audits of compliance policies and standards; and
- Review of documentation and billing relating to claims made to federal, state and private payers for reimbursement, performed internally or by an external consultant as determined by Compliance Officer and Corporate Compliance Committee.

The audits and reviews will examine The Shield Institute's compliance with specific rules and policies through on-site visits, personnel interviews, general questionnaires (submitted to employees and contractors), and individual service recipient record documentation reviews.

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<sup>2</sup> In no event, however, shall any guidance provided be deemed legal advice.



## **Detection and Response**

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### **Rectification**

It is our policy to not retain any funds which are received as a result of overpayments. If The Shield Institute identifies that an overpayment was received from any third party payer, a voluntary disclosure and a refund will be made to the appropriate regulatory authority, consistent with the advice of counsel. In instances where it appears an affirmative fraud may have occurred, appropriate amounts shall be returned after voluntary disclosure to, consultation with, and approval by involved regulatory and/or prosecutorial authorities. Systems shall also be put in place to try to prevent such overpayments in the future.

### **Compliance Certification**

Every vendor/contractor/consultant/other paid agent and each of its employees engaged in performing services for The Shield Institute are required to sign and return a Compliance Certification form acknowledging receipt of a copy of **The Shield Corporate Compliance Guidelines Handbook for Vendors/Contractors/ Consultants/Other Paid Agents and Their Employees.**

## COMPLIANCE GUIDELINE #3

### THE SHIELD INSTITUTE CODE OF CONDUCT

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IN FURTHERANCE OF ITS MISSION, TO WORK IN PARTNERSHIP WITH FAMILIES AND COMMUNITIES TO ENABLE CHILDREN AND ADULTS WITH DEVELOPMENTAL DISABILITIES TO LEAD MEANINGFUL LIVES, IN FULL COMPLIANCE WITH ALL APPLICABLE LAWS AND REGULATIONS, THE BOARD OF DIRECTORS HAS PROMULGATED THIS CODE OF CONDUCT, SETTING FORTH THE GENERAL PRINCIPLES TO WHICH THE AGENCY SUBSCRIBES AND TO WHICH THE AGENCY EXPECTS EVERY MEMBER (meaning EVERY DIRECTOR, OFFICER, EMPLOYEE [FULL-TIME, PART-TIME, AND PER-DIEM], INTERN, AND VOLUNTEER) OF THE SHIELD INSTITUTE TO ADHERE.

ADDITIONALLY, AS AN EXPRESS CONDITION OF DOING BUSINESS WITH THE SHIELD INSTITUTE, THE AGENCY (meaning THE SHIELD INSTITUTE) REQUIRES EVERY VENDOR, CONTRACTOR, CONSULTANT, OR OTHER AGENT TO COMPLY WITH THE SUBSTANTIVE REQUIREMENTS OF THIS CODE OF CONDUCT.

### CODE OF CONDUCT NUMBER 1

Strive to deliver quality services.

- **Treat every individual who receives services with respect**--Every member of the Agency shall treat every adult and child who receives services with consideration, courtesy, dignity, and respect.
- **Adhere to the highest professional and ethical standards**--It is the responsibility of every member to maintain the Agency's integrity and reputation by that member's commitment to conducting himself or herself in accordance with the highest professional and community ethical standards, regardless of the source or amount of payment.
- **Retain well qualified personnel**--The Agency shall only employ or retain the services of persons and companies that possess the proper credentials, experience, and expertise required to perform their respective functions.
- **Individuals who receive services have a right to know**--Individuals receiving services have the right to know what they need to know to make good, sound decisions. That includes receiving information about the Agency and its policies, procedures and charges, and who will provide services on behalf of the Agency.
- **Subordinates deserve clear instructions**--Supervisors shall strive to provide members under their direction and supervision with clear instructions about what is expected of them.
- **Protect the private information of every individual receiving services**--All personal identifiable information (e.g., health, financial, home address and telephone number, etc.) belonging to individuals whom the Agency serves and their families is confidential. (Members *should refer to the Shield Institute's HIPAA policy and procedures for specific instructions in how to best ensure confidentiality of protected health information.*)

### CODE OF CONDUCT NUMBER 2

**Comply with all applicable laws and regulations.**

- **Obey laws and regulations**--Every member of the Agency shall comply with all applicable laws, regulations, standards and other requirements imposed by any level of government. Without limiting the generality of the prior statement, every member shall strictly comply with all requirements of the Medicare and Medicaid programs.
- **Submit required governmental information**--All reports or other information required to be provided to any federal, state or local government agency shall be accurate, complete, and filed on time.
- **No payment for Referrals**--Neither the Agency nor any of its members shall pay any employee, volunteer, physician, or other health care professional, directly or indirectly, in cash or by any other means, for the referral of any adult or child to receive services. Every payment made by or on behalf of the Agency to a health care professional or other service provider shall be supported by proper documentation that the services contracted for were in fact rendered.
  - No member is authorized to enter into any joint venture, partnership or other risk sharing arrangement with any entity that is a potential or actual referral source unless the arrangement has been reviewed and approved by the Agency's legal counsel.
- **Accurate and Well-Documented Billing**-- The Agency shall create and maintain detailed program and billing records that adequately document the services rendered and billed. The Agency will bill only for services actually rendered and that are fully documented in the records of adults and children receiving services. If the services must be coded, then only billing codes that accurately describe the services provided will be used. If a suspected error in any claim is discovered, the Agency shall promptly investigate and make any corrective adjustments and refunds that may be appropriate.
  - Every member who performs billing and/or coding of claims on behalf of the Agency shall take every reasonable precaution to ensure that his or her work is accurate, timely, and in strict compliance with federal, state, and local laws and regulations and the Agency's policies.
  - Every member is expressly prohibited from submitting any claim on behalf of The Shield for payment or reimbursement of any kind that is false, fraudulent, inaccurate or fictitious. No falsification of program, service, time, or other records that are used for the basis of submitting claims will be tolerated.
- **Maintain records**--Every member shall protect the confidentiality of the records of every individual receiving services and other personal information, as well as Agency staff records and maintain these records in accordance with applicable federal, state, and local laws and regulations and the Agency's retention and destruction schedules. No member may use or disclose any confidential Agency information to anyone, except when required to accomplish a legitimate Agency business purpose. Proprietary Information belonging to the Agency may not be removed from the Agency premises without permission of the member's supervisor or other Agency manager who possesses the requisite authority over the information.

**CODE OF CONDUCT NUMBER 3**

**Do not engage in unethical business relationships.**

- **No unethical dealings**-- The Agency seeks positive relationships with government programs and third party payers. Positive relationships require ongoing communication about the progress of individuals being served and billing for services rendered. The Agency will not pursue any business opportunity that requires engaging in unethical activity.
- **No misuse of proprietary or confidential information**--No member shall improperly use or reveal any proprietary or confidential information belonging to the Agency or improperly use or reveal, for personal gain or otherwise, proprietary or confidential information belonging to another party that was obtained as a consequence of any business relationship with that other party..
- **No subordination of professional judgment**--No member shall subordinate his or her professional standards, judgment, or objectivity to any individual. Whenever significant differences of opinion in professional judgment arise, the issue should be referred to the cognizant supervisor for resolution. If the dispute is between a member and his or her supervisor, the matter shall to be referred to the Compliance Officer and/or Director of Human Resources for investigation and resolution.
- **Make honest representations**--Every member is expected to be honest and forthright in any representations he or she makes to any individual receiving services, vendor, payer, other member or agents and the community.
- **Promote the public's trust**--Every member shall perform his or her duties in a way that promotes the public's trust in the Agency.

## CODE OF CONDUCT NUMBER 4

### **Avoid actual conflicts of interest as well as the appearance of impropriety.**

- **Avoid conflicts and the appearance of impropriety**-- Every member should avoid any activity that conflicts with the interests of the Agency or that of any individual receiving services from the Agency.
  - No member should undertake a paid or unpaid position with another entity if that member has reason to believe that such position is likely to interfere with his or her ability to perform his or her duties at the Agency.
  - In order to preserve and protect both the Agency's and the member's reputation for integrity, every member should conduct himself or herself so as to avoid the appearance of an impropriety (even when, in the strictest sense, no actual conflict exists).
- **Promptly seek advice if a potential conflict arises**-- If a member suspects that a potential conflict may exist or be created concerning himself, herself, or a member of his or her family, then he or she should promptly consult with their supervisor, the Director of Human Resources, or the Compliance Officer before undertaking that activity.
- **Exercise care in placing business with family ties to Agency personnel**--Placing any business of the Agency with any firm in which it is known that an owner, Director, Officer, or employee is related by blood or marriage to a Director, Officer, or employee of the Agency, may constitute a conflict of interest. Advance disclosure to and written approval by the Executive Director or his or her designee are required in such a situation.
- **Avoid entanglements with Agency competitors, customers, or suppliers**--No member should knowingly become involved, directly or indirectly, in outside commercial activities that could improperly influence his or her actions. For example, a member should not be an officer, director, manager, or consultant of a potential competitor, customer, or supplier of the Agency without first disclosing that relationship to and obtaining the prior written approval of the Director of Human Resources and the Executive Director.
- **Occasional business courtesies to potential referral sources**--Gifts and benefits to potential referral sources are not appropriate. Occasional business courtesies (i.e., non-cash gifts such as modest meal expenditures, entertainment or agency-sponsored or -hosted social events), although not expressly prohibited, are discouraged. Before being extended, however, a member shall seek the prior written approval of the Executive Director and the Compliance Officer. (Refer to The Shield Institute's "*Business Courtesies and Referrals*" Policy.
- **Solicitation and acceptance of gifts**--No member shall accept or provide benefits that could be seen as creating conflict between his or her personal interests and the Agency's legitimate business interests. This includes soliciting meals, gifts, refreshments, transportation, or entertainment provided or received in connection with the job.
  - No member may accept a gift of any kind from any individual or business entity who or that is in the process of competitive bidding for a contract with the Agency

- Under no circumstances may a member ever accept a cash gift from any Agency vendor or potential vendor. A member may, however, accept a non-cash gift of nominal value (e.g., retail value estimated at \$10 or less) from a vendor. Additionally, a member may accept a box or basket of fruit, cookies, chocolates, etc. of greater value from a vendor, provided that the member shares the contents of the box or basket openly with other members of his or her department. All other gifts in excess of nominal value shall be refused, and the offer of the gift as well as the vendor's name shall be promptly reported to the Compliance Officer.

## CODE OF CONDUCT NUMBER 5

### **Protect the Agency' property and respect the property rights of others with whom the Agency does business.**

- **Authorization and expenditure of funds; use of property**-- Every member shall obtain appropriate authorization prior to committing or spending the Agency's funds. Every member is personally accountable for his or her proper expenditure of the Agency funds and for the proper use of any Agency property that may be entrusted to that member.
  - No member may use the Agency's resources or the resources of any individual receiving services for the member's personal gain or any other improper purpose, or permit others to do so.
  - Any improper financial gain by any member (including, but not limited to the outright theft of property or embezzlement of money resulting, in whole or in part, from the use of the Agency's property or the property of any individual receiving services) is expressly prohibited,
- **Surplus property**--Surplus, obsolete or junked property shall be disposed of in accordance with the Agency's procedures. Unauthorized disposal of property is a misuse of assets.
- **Duty of productivity**—Every employee's salary or wage is predicated on the Agency receiving a fair day's work for a fair day's pay. Consequently, every employee has a duty to be productive during the time for which he or she is paid by the Agency.
- **Use of Agency computer systems**--A member may only use the Agency's computer systems, networks, and software in a manner that is consistent with the Agency's license(s) and/or rights and the Agency's information technology policies and procedures. Each member shall take all reasonable steps to protect the Agency's computer systems and software from unauthorized access or intrusion.
- **Protect proprietary and confidential business information belonging to the Agency and others**--Every member who (by virtue of his or her position or need to perform his or her work) is given access to any proprietary or confidential information belonging to either the Agency or any person or organization with which the Agency does business, is required to protect such information from unauthorized use or exploitation. Every member is also expressly prohibited from violating the intellectual property rights (such as copyrights and patents) of others with whom the Agency does business.



## CODE OF CONDUCT NUMBER 6

### Respect others.

- **Treat everyone with respect**--Every member shall treat everyone with whom he or she interfaces (i.e., adults and children receiving services and their families and guardians, other members, government representatives, vendors, contractors, visitors, etc.) with dignity, courtesy, respect and consideration, regardless of position or station. No member is permitted to:
  - Physically assault anyone;
  - Verbally abuse anyone;
  - Deprive anyone of that person's rights in his or her physical or intellectual property; or
  - Sexually harass or intimidate anyone. (By way of example, unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature are serious violations of the Agency's standards of conduct.)
- **Resolve differences in professional judgment**--Every member is expected to conform to the ethical and professional standards of his or her respective profession and to exercise sound judgment in the performance of his or her duties. Any differences of opinion in professional judgment between two members that they are unable to resolve amicably within a reasonable time shall be referred to the cognizant manager(s), who will then become responsible for prompt resolution in accordance with the applicable grievance procedures.
- **Equal opportunity employer**--The Agency is an Equal Opportunity employer and is committed to affording all applicants and all employees equal employment and advancement opportunities respectively, consistent with applicable laws, regulations, and the Agency's policies. The Agency shall not permit discrimination on the basis of race, color, religion, sex, sexual orientation, marital or parental status, national origin, citizenship status, age, handicap, or military service. The Agency will also attempt to provide reasonable accommodations to facilitate the employment of persons with disabilities who request such consideration.
- **When to contact the Agency's Director of Human Resources**—(Separate and apart from any report(s) that may be made to a member's supervisor, an Agency manager, or the Compliance Officer) every request for a reasonable accommodation to facilitate employment and every allegation of a possible human rights allegation (e.g., sexual harassment, unlawful discrimination, etc.) shall be promptly reported to the Agency's Director of Human Resources.

## CODE OF CONDUCT NUMBER 7

**Exercise concern for the health and safety of everyone, and respect the environment.**

- **Health and Safety are top priorities**--Every member of the Agency shall, in the performance of his or her duties, comply with all occupational health and safety laws and regulations, and all Agency work and safety rules, and make every reasonable effort to ensure that adults and children receiving services, members, and visitors are protected from undue health risks and unsafe conditions.
- **Safe handling of drugs**--Every member who (by virtue of his or her position or need to perform his or her work), is given access to drugs and other pharmaceuticals is required to ensure that they be safely stored, secured, inventoried, and dispensed in accordance with the applicable clinical orders.
- **Respect the environment**--Every member of the Agency shall, in the performance of his or her duties, comply with all applicable environmental laws and regulations, ensure that the Agency has obtained all necessary licenses, permits, and governmental approvals; and employ proper procedures and controls in the storage, handling, and disposition of hazardous wastes.

## CODE OF CONDUCT NUMBER 8

### Report Suspected Violations of the Code.

- **The Code is part of a hierarchy of Agency policies**--The **Code of Conduct** is supplementary to and is not intended to supersede the specific policies, procedures, and rules that the Agency has enacted and may, in the future, enact to govern the agency's operations and the conduct of its members.
- **Suspected violations must be reported**--Each member is required to report suspected violations of the Code, applicable law or regulations, The Shield's policies or procedures, or any other apparent regularities (e.g., errors or omissions in billing, failure to render quality care; missing or improperly handled drugs, misuse of property, etc.) to his or her supervisor, the Director of Human Resources, the Assistant Executive Director, the Associate Executive Director, the Executive Director, the Compliance Officer, or **THE SHIELD INSTITUTE TOLL-FREE NO CALLER ID COMPLIANCE HELPLINE**. If a member prefers, he or she may make the report anonymously (by mail or by Helpline). The Agency shall, if requested, make every reasonable effort to keep confidential the identity of anyone reporting a suspected violation, to the extent permitted by law, and except if doing so would effectively prevent the Agency from conducting a full and fair investigation of the allegations.
- **Suspected violations must be investigated**--The **Code of Conduct** shall be enforced. Authorized Agency personnel shall investigate reports of suspected violations.
- **Management has a special responsibility**--Managers and supervisors have a special duty to adhere to the principles of the Code, to encourage their subordinates to do so, and to recognize and report suspected violations.
- **Corrective and disciplinary actions and disclosure**--If it is determined that a violation has occurred, The Shield reserves the right to take corrective and disciplinary action against any person who was involved in the violation or who allowed it to occur or persist due to a failure to exercise reasonable diligence. Additionally, The Shield may make an appropriate disclosure to governmental agencies (including law enforcement authorities). Disciplinary actions will be determined on a case-by-case basis and in accordance with any applicable labor union contracts.

**CODE OF CONDUCT NUMBER 9**

**Promise of no retaliation for good faith reporting.**

The Agency promises that there shall be no adverse action, retribution, or other reprisal taken against any individual for his or her good faith reporting of a suspected violation of this Code, even if the allegations ultimately prove to be without merit. The Agency shall, however, pursue disciplinary action against any member who is shown to have knowingly filed a false report with the intention to injure another person.

\* \* \*

The Agency reserves the right, at any time, to amend this **Code of Conduct** in its sole, good faith, discretion.

## COMPLIANCE GUIDELINE #4

### Compliance with Key Federal, State, and City Laws

The Shield Institute is committed to prompt, complete, and accurate coding and billing of all services provided to individuals. The Shield Institute and its employees, contractors and agents shall not make or submit any false or misleading entries on any claim forms. No employee, contractor, or agent shall engage in any arrangement or participate in such arrangement at the direction of another person, including any supervisor or manager, which results in the submission of a false or misleading entry on claims forms or documentation of services that result in the submission of a false claim.

The Shield Institute is committed to detecting and preventing fraud, waste, and abuse in federal and state healthcare programs. This Policy provides a brief summary of the **Federal False Claims Act**, the **Administrative Remedies For False Claims**, the **New York State False Claims Act**, and certain other salient New York State and City laws concerning false statements or claims and employee protections against retaliation. This policy also sets forth the procedures The Shield Institute has put into place to prevent any violations of federal or New York State laws regarding fraud or abuse in its health care programs.

This policy applies to all employees (including management), “*contractors*”, and “*agents*”.

For purposes of this policy, “*contractor*” or “*agent*” includes<sup>3</sup>:

- Any contractor, subcontractor, agent, or other person which or who, on behalf of The Shield Institute, furnishes, or otherwise authorizes the furnishing of Medicaid health care items or services, performs billing or coding functions or is involved in the monitoring of health care provided by The Shield Institute.

#### **Overview of Relevant Laws:**

The following description of various laws has been taken from the official website of the New York State Office of the Medicaid Inspector General:

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<sup>3</sup> See CMS Letter to State Medicaid Directors (SMDL#06-024, December 13, 2006).

## 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) are false and that indicate a lack of 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 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 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 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 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 needs are not taken into account in determining his or her need or that of his or her family 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 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.



- 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. NEW YORK CITY LAWS**

#### **New York City False Claims Act (Title 7 NYC Administrative Code Chapter 8)**

Similar to the New York State False Claims Act, the New York City False Claims Act attempts to parallel the federal False Claims Act and impose penalties and fines on individuals and entities that file false or fraudulent claims with the City, including special education programs funded by the New York City Board of Education. The penalty for filing a false claim is \$5000 -\$15,000 per claim and the recoverable damages are three times the value of the amount falsely received. In addition, the false claim filer may have to pay the city government's legal fees.

## IV. 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.

### **New York City False Claims Act (NYC Admin. Code §7-805)**

The New York City False Claims Act provides protections to any employee who believes that he or she has been retaliated against by his or her employer as a result of his or her furtherance of an action under the Act (e.g., reinstate with comparable seniority; two times back pay with interest, compensation for special damages, litigation costs and reasonable attorneys' fees).

The Act allows private individuals to file complaints. If the case eventually results in payments back to the government, the person who started the case can recover as much as 30% of the proceeds

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### **Policy**

1. ***Employees shall receive educational information about false claims laws and whistleblower Protections.***
  - a. ***Incorporation of Policy into Employee Handbook***—This policy shall be shall be incorporated into The Shield Institute Employee Handbook, and every employee shall receive a copy.
  - b. ***Incorporation of Policy into New Employee Orientation Materials***--The Compliance Officer will ensure that a copy of this policy shall be included among the materials provided to every new employee as part of his or her orientation program package, and records shall be maintained to document the receipt of this policy.
2. ***Interns, volunteers, vendors, contractors, consultants, and other agents shall receive educational information about false claims laws and whistleblower protections.***
  - a. This policy shall be disseminated to all interns, volunteers, vendors, contractors, consultants, and other agents by hand-delivery, mail, and/or by placing it on The Shield Institute website (and advising all such parties of how it may be accessed).
3. ***Billing activities must comply with laws and regulations***--The Shield Institute will perform billing activities in a manner consistent with the regulations and requirements of third party payors, including Medicaid and Medicare.

4. ***Periodic auditing and monitoring shall be conducted***--The Shield Institute will conduct periodic auditing and monitoring procedures as part of its efforts to assure compliance with applicable regulations.
5. ***Everyone is expected to report suspicions of false billing practices and false documentation of services***--Any employee, intern, volunteer, vendor, contractor, consultant, or other agent who has any reason to believe that anyone on behalf of The Shield Institute is engaging in false billing practices or false documentation of services is expected to report the practice pursuant to The Shield Institute's *Reporting of Compliance Concerns and Protection of Whistleblowers Policy and Procedure*.
6. ***Retaliation is prohibited:***
  - a. Any form of retaliation against any employee, intern, volunteer, vendor, contractor, consultant, or other agent, who reports a perceived problem or concern in good faith, is strictly prohibited.
  - b. Any employee who commits or condones any form of retaliation will be subject to discipline up to, and including, termination.

### **Procedures**

1. ***Dissemination to Employees***--The Shield Institute will provide a copy of this policy and procedure to all its current employees, and, in the future, provide a copy of this policy to every new employee as part of its new employee orientation process. Additionally, a copy of this policy and procedure will be incorporated into all future editions of **The Shield Institute Employee Handbook**.
2. ***Dissemination to Vendors, Contractors, Consultants, and Other Paid Agents***--All contracts issued by The Shield Institute to any vendor, contractor, consultant, or other paid agent shall:
  - a. Incorporate this policy by reference (i.e., by physical attachment of a copy of the policy or a reference to The Shield Institute website where the policy can be accessed and downloaded); and
  - b. Require that the vendor, contractor, consultant or agent comply with the substantive elements of The Shield Institute Compliance Program, including but not limited to the entity providing training to its employees in the above referenced federal and state false claims acts and whistleblower protections.