

Executive Policy Bulletin #A-11-01

CHAUTAUQUA COUNTY

REGULATORY COMPLIANCE PLAN

**Chautauqua County Compliance
Plan Table of Contents**

Section Name	Page
Preamble	3
Definitions	4
Regulatory Compliance Policy	8
Service Excellence and Operating Principles	10
Role of the Compliance Officer	11
Structure, Duties, and Role of the Compliance Governance Committee	12
Delegation of Substantial Discretionary Authority	13
Compliance Training	14
Effective Confidential Communication	15
Enforcement of Compliance Standards	17
Auditing and Monitoring of Compliance Activities	18
Detection and Response	19
Whistleblower Provisions and Protections	20

Regulatory Compliance Plan Preamble

Preventing and detecting fraud, waste, and abuse is an important fiduciary responsibility of Chautauqua County. Chautauqua County meets the criteria established by the Office of the New York State Medicaid Inspector General, which requires a Corporate Compliance Program.

As such, Chautauqua County adopted a Corporate Compliance Plan effective December 18, 2009 to help ensure that the County maintains a high level of honesty and ethical behavior in all aspects of its delivery of services and relations with clients, third party payers, representatives, agents, and independent contractors.

Our intent is to reasonably design, implement, and enforce a Corporate Compliance Program that will disclose, prevent, and detect misconduct, fraud, waste, and abuse. All County employees are expected to understand and adhere to this Compliance Plan.

Chautauqua County will transact its business in compliance with the laws of the jurisdiction in which it does business, including local, state and federal jurisdictions. Instances where questions arise concerning interpretation or applications of laws and regulations should be referred to the County Compliance Officer.

Regulatory Compliance Plan Definitions

Claim

As used in the New York False Claims Act, "claim" means any request or demand, whether under a contract or otherwise, for money or property that is made to any employee, officer, or agent of the state or of a local government, or to any contractor or grantee, or other recipient, if the state or a local government provides any portion of the money or property that is requested or demanded or will reimburse such contractor, grantee, or other recipient for any portion of the money or property that is requested or demanded.

False Claim

False claim means any claim that is, either in whole or in part, false or fraudulent.

Federal False Claims Act (FFCA)

The FFCA, also known as the Qui Tam Statute, the Informer's Act, or the whistleblower law, allows a private person (such as a County employee) to sue a person or company who is knowingly or negligently submitting false claims to the federal government including but not limited to health care fraud. Some examples of fraud are submitting bills for services not provided, submitting a false record that does not comply with a contractual requirement, obtaining interim payments throughout the year, and then filing a false cost report at the end of the year to avoid making a refund. Lawsuits under this statute are called *qui tam* suits. If the *qui tam* suit is successful, the whistleblower, known as a "qui tam relator", will be entitled to 15- 30% of the government's total recovery, which includes damages for false bills, tripled, plus civil penalties of \$5,000 - \$10,000 per claim. To recover, the relator must have complied with complex statutory requirements. Merely providing information to a hotline will not entitle the relator to a recovery under the False Claims Act.

New York State False Claims Act (NYSFCA)

The NYSFCA, also referred to as a Qui Tam Statute or whistleblower law, allows a private individual (such as a County employee) to sue a person or company (including a fellow employee or employer in their individual capacity), if such person or company knowingly submits a false or fraudulent claim to a state or local government (such as New York State or Chautauqua County). Such false or fraudulent financial claims include but are not limited to health care fraud in programs such as Medicaid. Persons who are civilly prosecuted under this law will be liable to the state for a civil penalty of not less than six thousand dollars and not more than twelve thousand dollars, plus three times the amount of damages that the state sustains because of the act of such person, and liable to the local government for three times the amount of the damages sustained by such local government because of the act of such person. Lawsuits under this statute are called *qui tam* suits, and those reporting fraud are called "*qui tam relators*". A *relator* in a successful lawsuit may recover between 15%-30% of the proceeds in the action or settlement of the action, depending who prosecutes the action.

Overpayment

Payment of an amount greater than required or permitted by law, regulation, or agreement.

"Qui Tam"

The term is a Latin abbreviation for an individual who brings a lawsuit on behalf of the government as well as himself.

Qui Tam Relator

A *qui tam relator* is an informant or whistleblower who relates insider information of wrongdoing sufficient to bring a lawsuit on behalf of the aggrieved government under one of the qui tam statutes that include the Federal False Claims Act and the New York State False Claims Act.

Qui Tam Statutory Protections and Remedies

Both the Federal False Claims Act and New York State False Claims Act protect qui tam plaintiffs who are demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employer or on behalf of the government in furtherance of an investigation for, initiation of, or testimony for, or assistance in an action to be filed in court under the qui tam statute. This provision allows reinstatement, double back pay, interest on the back pay, plus special damages including litigation costs and reasonable attorney fees.

Whistleblower

An informant within an organization who discloses insider information of wrongdoing.

A "Qui tam relator" is one type of Whistleblower under the Federal and State False Claims Acts.

Whistleblowers under other laws include the following:

- (1) Under New York Civil Service Law Section 75-b, a whistleblower is a public employee who discloses to a public employer or other government body information regarding a violation of a law, rule, or regulation:
 - a) which violation presents a substantial and specific danger to the public health or safety;
or
 - b) which an employee believes constitutes an improper governmental action. "Improper governmental action" shall mean any action by a public employee or public employer that is undertaken in the performance of such person's official duties, and which is in violation of any federal, state, or local law or rule or regulation.

(2) Under New York Labor Law Sections 740 and 741, a whistleblower is a private employee who does any of the following:

- a) discloses or threatens to disclose to a supervisor or to a public body an activity, policy, or practice of the employer that is in violation of a law, rule, or regulation which violation creates and presents a substantial and specific danger to public health or safety, or which constitutes health care fraud;
- b) provides information to, or testifies in an investigation, hearing, or inquiry into a violation of a law, rule, or regulation by such employer; or
- c) objects to or refuses to participate in any such activity, policy, or practice in violation of a law, rule, or regulation.

Whistleblower Laws

In general, Whistleblower laws are laws that describe:

- 1) what types of activities constitute wrongdoing and should be reported;
- 2) what types of actions an informant may take to report wrongdoing; and
- 3) what protections are provided to the whistleblower under the relevant law.

The following Whistleblower laws apply to Chautauqua County: the Federal False Claims Act, the New York State False Claims Act, the New York State Labor Law, and the New York State Civil Service Law.

Whistleblower Statutory Protections and Remedies

For protections and remedies under a False Claims Act, see "Qui Tam Statutory Protections and Remedies" above. Both the *New York State Labor Law* and the *New York State Civil Service Law* provide protections for whistleblowers described below. *The New York Labor Law* § 740 and 741 prohibits private employers from taking any retaliatory personnel action including discharge, suspension, demotion or other adverse action in the conditions or terms of employment against employees for disclosing or threatening to disclose information to a supervisor or to a public body which information is described in the statute and described above under "Whistleblower" provisions of the New York State Labor Law.

A private employee who has been the subject of a retaliatory personnel action in violation of §740 and/or 741 may bring a civil action in court and the court may order reinstatement of the employee to the same or an equivalent position, the reinstatement of full fringe benefits and seniority rights, and compensation for lost wages, benefits, and other remuneration including but not limited to court costs and reasonable attorney fees.

However, if an employee institutes an action under §740 and 741, such actions shall be deemed a waiver of the rights and remedies available under any other contract, collective bargaining agreement, law, rule, or regulation or under the common law.

Under *New York State Civil Service Law* Section 75-b, a public employer shall not dismiss or take other disciplinary or adverse personnel action against a public employee regarding the employee's employment because the employee discloses to a government body certain information described in the statute and described above under "Whistleblower" provisions of the NY Civil Service Law. In order for the protections to apply under this law, employees must first make a good faith effort to disclose said information to the supervisor or his designee unless there is imminent and serious danger to the public health or safety. Where an employee is subject to dismissal or other disciplinary action under a final and binding arbitration provision or other disciplinary procedure contained in a collectively negotiated agreement, and the employee reasonably believes that such adverse action would not have been taken but for his or her whistleblower conduct, he or she may assert such a defense. If the arbitrator finds that the adverse personnel action is based solely on a violation by the employer of the whistleblower provisions of the Civil Service Law, then the arbitrator or hearing officer shall dismiss the adverse action, reinstate the employee with back pay, and take other action permitted under any collectively negotiated agreement. Where an employee who has been the subject of a retaliatory personnel action is not subject to a final and binding arbitration decision, the employee may bring a civil action in court and the court may order reinstatement of the employee to the same or an equivalent position, the reinstatement of full fringe benefits and seniority rights, and compensation for lost wages, benefits, and other remuneration including but not limited to court costs and reasonable attorney fees.

Chautauqua County Regulatory Compliance Policy

I. Policy

It is the policy of Chautauqua County to comply with all applicable federal, state, and local laws and regulations. It is also our policy to adhere to the policies and procedures adopted by the County Executive and the Compliance Governance Committee.

II. Commitment

We are committed to our responsibility to conduct our business affairs with integrity based on sound ethical and moral standards. We will hold our employees, contracted practitioners, and vendors to these same standards. Chautauqua County 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 and state health care statutes, regulations, and health care program requirements.

III. Responsibility

All employees, contracted practitioners, volunteers, interns and vendors have the responsibility to report any instances of suspected or known noncompliance to their immediate supervisor, the County Executive or the Compliance Officer. Reporting may be made without fear of retaliation, retribution, or breach of confidentiality. Failure to report known noncompliance or making false reports will be grounds for disciplinary action, including termination.

IV. Policies and Procedures

Chautauqua County will communicate its compliance standards and policies through required training initiatives to all employees, contracted practitioners, volunteers, interns and vendors. We are committed to these efforts through distribution and/or communication of this Compliance Policy.

V. Enforcement

This Compliance Policy will be consistently enforced through appropriate County disciplinary mechanisms including, if appropriate, discipline of individuals responsible for failure to detect noncompliance.

VI. Chautauqua County Response to Non-Compliance

Detected noncompliance will be responded to in an expedient manner. We are dedicated to the resolution of such matters and will take all reasonable steps to prevent further similar violations, including any necessary modifications to the Compliance Plan.

VII. Due Diligence

Chautauqua County will exercise due diligence with regard to background and professional license investigations for prospective employees, contractors, volunteers, interns and vendors.

VIII. Whistleblower Provisions and Protections

Chautauqua County will extend to its employees, contractors, volunteers and interns all protections afforded to them under the applicable state and federal Whistleblower laws including the Federal False Claims Act, the New York State False Claims Act, and the New York Civil Service Law. Private contractors may find protections under the New York State Labor Law as well as the False Claims Act.

Service Excellence and Operating Principles

I. Service Excellence

Chautauqua County Government exists to serve the present and future inhabitants of the County. Our integrity and the excellence of our service are very important to our County. Integrity means that we regard public office and public employment as public trusts, and that we place honesty above all else. Excellence means consistently providing more than the level of performance that our citizens and customers have a right to expect.

II. County Operating Principles

To achieve service excellence and further these principles, we will:

- Care about the people, citizens, and customers we serve, about each other, about what we do, and how well we do it.
- Cooperate with the public and with all levels of government in order to deliver the best possible service in the most effective and efficient manner.
- Communicate honestly, supportively, and openly throughout the organization to enable a full and complete flow of information necessary to deliver excellent service.
- Create and innovate constantly, bringing all our abilities to bear on the problems facing this county and its citizens.

III. Expectations

We ensure that all aspects of client care and business conduct are performed in compliance with our Service Excellence and Operating Principles including all policies, procedures, professional standards, and applicable governmental laws, rules, and regulations. Chautauqua County expects every person who provides services to our consumers to adhere to the highest ethical standards and to promote ethical behavior. Any whose behavior is found to violate ethical standards will be subject to discipline.

Compliance concerns and shortcomings are to be reported to immediate supervisors, the Compliance Officer or the County Executive, so that each situation may be appropriately dealt with. Compliance issues or concerns may be reported by calling the Compliance Hotline at 716-753-4178 or by contacting the Compliance Officer via email at compliance@chqgov.com.

The Role of the Compliance Officer

I. Compliance Officer

Chautauqua County has designated a Compliance Officer (CO) to oversee and coordinate the compliance program activities. In the absence of the CO, the County Executive will designate an individual or agency to act as the CO.

II. Job Duties

The CO is directly obligated to serving the best interests of Chautauqua County, its residents, and its employees.

Responsibilities of the CO include:

- Facilitation of the Compliance Governance Committee;
- Reporting on a regular basis to the County Executive on the progress of the compliance work plan;
- Direct oversight of the HIPAA privacy elements of Chautauqua County's Compliance Plan; and
- Facilitation and ongoing monitoring of the implementation of the compliance program.

In addition to the above duties, the Compliance Officer is responsible for oversight, direction, and/or approval of the:

- Development and maintenance of a Compliance Work Plan and annual Report of compliance activities;
- Periodic review and update of the Compliance Plan as changes occur within Chautauqua County and in the law and regulations of governmental and third party payers;
- Development, implementation, and revision of compliance policies and procedures (P&P), ensuring the dissemination of P&P to appropriate employees;
- Internal audits for monitoring effectiveness of compliance standards;
- Provision of guidance to management, all County personnel, and individual departments regarding all aspects of compliance;
- Ongoing implementation of county-wide training and communication programs to ensure that all employees and affiliated parties are educated in the Compliance Plan, Policies and Procedures, laws, regulations, and other issues as are deemed necessary;
- Effective communication of Chautauqua County's Compliance Plan requirements to independent contractors;
- Maintenance of an effective, confidential reporting system that encourages internal reporting of suspected non-compliance; and
- Timely completion of compliance investigations involving appropriate parties through follow up and resolution.

The Structure, Duties, and Role of the Compliance Governance Committee

I. Reporting Structure and Purpose

The CO and the County Executive recommend membership appointments to the Compliance Governance Committee (CGC). The CGC reports compliance issues to the CO. The CGC's purpose is to maintain the Chautauqua County Compliance Plan, conduct training for all County employees, direct annual audit activities of the Compliance Program, identify individual Department risk standards, including the design and implementation of the Department-specific internal monitoring and auditing to ensure compliance with relevant laws, rules, and regulations. The Department Director of any County health-related department or their designee, and other designated Department Heads/designee(s), are members of the CGC, and advises and assists the CO with implementation of the Compliance Plan.

II. Function

Additional roles of the **Compliance Governance Committee** are to:

- Analyze the environment where Chautauqua County does business, including legal requirements with which it must comply;
- Review and assess existing policies and procedures that address these risk areas for possible incorporation into the Compliance Plan;
- Review, revise, and create compliance policies and procedures;
- Develop internal systems and controls to carry out compliance standards and policies;
- Monitor internal and external audits to identify potential non-compliant issues;
- Report on, investigate, and document compliance issues;
- Assure the implementation of corrective and preventive action plans;
- Develop a process to solicit, evaluate, and respond to complaints and problems; and
- Assist the CO to create, revise, and implement the Compliance Work Plan.

Delegation of Substantial Discretionary Authority

I. Requirement

Any employee or prospective employee who holds, or intends to hold, a position with substantial discretionary authority for Chautauqua County is required to disclose any name changes, and any involvement in non-compliant activities including health care related crimes. In addition, Chautauqua County performs background investigations for new employees as required by law or regulation.

II. Conflict of Interest

Chautauqua County elected and appointed officials, employees, volunteers and interns are governed by New York State law and the Chautauqua County Code of Ethics and certain persons are required to file annual financial disclosure statements.

Compliance Training

I. Expectations

Compliance training is a critical element of the Compliance Program (CP). Every employee, contractor, volunteer and intern is expected to be familiar with and knowledgeable about Chautauqua County's Compliance Plan ("Plan") and Code of Ethics ("Code"), and to have a solid working knowledge of his or her responsibilities under the Plan and Code. Compliance policies and standards will be communicated to all employees, contractors, volunteers and interns through required participation in training programs and/or through dissemination and access of the Plan. Employees, volunteers and interns who fail to attend or complete required compliance training may be subject to disciplinary action under their respective bargaining unit and/or contract.

Department in-service training on compliance-related matters will be documented and maintained by the County Department of Human Resources, who will report the status of compliance-related training to the CO.

As a routine matter, the County CO, or designee, will ensure that periodic internal audits of adherence to this standard are completed and reported to the Compliance Governance Committee.

II. Orientation

As part of their orientation, each employee, volunteer, intern and contractor shall receive a copy or be given access to the Compliance Plan, policies, and specific standards of conduct that affect their position or information about where and how to find this information on-line.

III. Attendance

All training related to the Compliance Plan will be verified through documentation maintained by the County Department of Human Resources.. Attendance of compliance training sessions is mandatory. Failure to attend required compliance training may result in disciplinary action. All departments must record any supplemental in-service training at the department level.

Effective Confidential Communication

I. Expectations

Open lines of communication between the Compliance Officer and every employee, contractor, volunteer and intern subject to this Plan are essential to the success of our Compliance Program. Every employee, agent, and contractor has an obligation to refuse to participate in any wrongful course of action and to report the actions according to the procedure listed below.

II. Reporting Procedure

If an employee, contractor, volunteer or intern witnesses, learns of, or is asked to participate in, an activity that could potentially violate or is suspected or known to violate this Compliance Plan or any Chautauqua County policy, or any law, rule or regulation, he or she must report the request and/or the activity. Employees, contractors, volunteers or interns should endeavor to contact their immediate supervisor and/or department head first. If those persons are not available, or the reporter has reason to believe that the supervisor and/or department head is a party to the activity, or if the suspected violation presents an immediate or serious danger to the public health or safety, then the employee, contractor, volunteer or intern shall contact the CO. Compliance issues or concerns may also be reported anytime, by calling the Compliance Hotline at 716-753-4178 or by email via compliance@chqgov.com.

Upon receipt of a question or concern, any immediate supervisor and/or department head receiving a report of non-compliance shall inform the CO of the issue, investigate the issue, and complete the complaint tracking form. Any questions or concerns relating to potential non-compliance by the CO must be reported immediately to the County Executive. The CO may, at any time, contact the County Attorney's office for advice, counsel, assistance, and/or support.

The CO or designee shall record the information necessary to conduct an appropriate investigation of all complaints. The CO or designee shall record the facts of the contact and the nature of the information sought and respond as appropriate. Chautauqua County shall, to the extent possible, protect the anonymity of the employee or contractor who reports any complaint or question. The Chautauqua County CO will accept anonymous reports of suspected or known non-compliance.

III. Protections

In the event that an anonymous report is received, no attempt will be made to identify the reporter. The identity of reporters will be safeguarded to the fullest extent possible and reporters will be protected against retaliation or retribution, or any other form of reprisal, for reports made in good faith. A report of any suspected violation of this plan shall not result in any reprisal as long as the reporter is not a party to any fraudulent or illegal activity. Any individual who threatens reprisal against a person who acts pursuant to his or her responsibilities under the Plan is acting against Chautauqua County's Compliance Plan. Any employee, contractor, volunteer or intern who engages in any such act of reprisal or who threatens such an act shall be subject to disciplinary action, up to and including termination of

employment.

IV. Guidance

Any employee, contractor, volunteer or intern may seek guidance with respect to the Compliance Plan or the County's Operating Principles at any time by following the reporting mechanisms outlined above. Any employee, contractor, volunteer or intern who has concerns about activities, information, or compliance policies may seek guidance from the CO.

Enforcement of Compliance Standards

I. Background Investigations

When required by law, rule, regulation, or policy, Chautauqua County will conduct a reasonable and prudent employee background investigation, including a reference check. Background checks may include fingerprinting, criminal background investigations, professional license verification, driver's license verification, drug screening, and exclusion verification.

II. Disciplinary Action - General

Employees who fail to comply with Chautauqua County's Compliance Plan and standards, or who have engaged in conduct that has the potential of impairing Chautauqua County's status as a reliable, honest, and trustworthy service provider, will be subject to disciplinary action, up to and including termination. Any discipline will be implemented in accordance with applicable collective bargaining agreements and Civil Service Law, and will be appropriately documented in the employee's personnel file, along with a written statement of the reason(s) for imposing such discipline. The Chautauqua County Department of Human Resources shall maintain a record of all disciplinary actions, including those involving the Compliance Plan, and will report annually to the County Executive regarding such actions. As stated earlier in this Plan, any action or behavior that is not in conformity with the County's Compliance Plan, with stated standards, guidelines, or procedures, or with any federal or state law or regulation, will be deemed Official Misconduct and will likely result in disciplinary action.

III. Performance Evaluation - Supervisory

Chautauqua County's Compliance Plan requires that the promotion of and adherence to the elements of the Compliance Plan be a factor in evaluating the performance of all Chautauqua County employees, contractors, volunteers and interns. They will be periodically trained in new compliance policies and procedures.

IV. Disciplinary Action - Supervisory

In the event that a report is made of a breach of compliance standards to a director, manager, or acting supervisor and that the responsible party fails to act upon the report, the responsible party is subject to disciplinary action in accordance with applicable collective bargaining agreements and Civil Service Law. In situations where reasonable diligence on the part of the director, manager, or acting supervisor would have led to the earlier discovery of any problem or violation and would have provided Chautauqua County the opportunity to correct it, the responsible party will be subject to appropriate corrective action.

Auditing and Monitoring of Compliance Activities

I. Internal Audits

Ongoing evaluation is critical in detecting non-compliance and will help ensure the success of Chautauqua County's Compliance Program. An ongoing auditing and monitoring system, under the direction of the CO, in consultation with the Compliance Governance Committee (CGC), is an integral component of our auditing and monitoring activity. This ongoing evaluation will include but shall not be limited to the following:

- Assessment of risk levels within County departments.
- Audit of internal controls and review of external audits.
- Review of relationships with third-party contractors, specifically those with substantive exposure to government enforcement actions.
- Review of documentation and billing relating to claims made to federal, state, and private payers for reimbursement.
- Ongoing review of the effectiveness of required Corrective Action Plans in meeting standards.
- Reporting of internal audit findings to the CO and CGC as audits are completed. The CO will include audit findings in its annual report to the County Executive. The audits and reviews will examine Chautauqua County's compliance with specific rules and policies through on-site visits, personnel interviews, general questionnaires, review of contracts, training records, billing and other financial records, and client record documentation reviews.

II. Plan Integrity

Additional steps to ensure the integrity of the Compliance Plan include:

- Department heads will notify the CO by telephone or email immediately in the event of any non-routine visits, audits, investigations, or surveys by any federal or state agency or authority.
- A copy of Intent to Audit correspondence received by any of Chautauqua County's departments from any regulatory agency charged with administering a federally or state funded program shall be sent to the CO.
- The CO, or his or her designee, is responsible for notifying the CGC of any applicable changes in laws, regulations, or policies as the information becomes available. The CO, or designee, is responsible for facilitating the review and modification, or creation, of appropriate policies and procedures as indicated by changes in laws, regulations, or policies, and for providing training and/or training curricula on new regulations and laws so as to ensure continuous compliance.

Detection and Response

I. Violation Detection

If, as a result of any audit, report, observation, or by any other means, the CO, the County Executive, and/or the CGC determines that there is any basis to suspect that a violation of the Compliance Plan may have occurred, the matter shall be referred by the CO to legal counsel, who, with the assistance of the CO or designee, shall conduct a more detailed investigation if warranted, or give guidance on the appropriate person to conduct the investigation. This investigation will follow the appropriate County Collective Bargaining Units protocol. This investigation may include, but is not limited to, the following:

- Interviews with individuals having knowledge of the facts alleged;
- A review of documents; and
- Legal research and contact with governmental agencies for the purpose of clarification.

If advice is sought from an outside governmental agency, the request and any written or oral response shall be fully documented.

II. Reporting

The investigator's written response to the allegation will be reviewed by the CO with legal counsel in attendance. Any additional action will be on the advice of counsel. The CO or designee shall report to the CGC regarding each investigation conducted.

III. Rectification

If Chautauqua County identifies that an overpayment was received from any payer, Chautauqua County will notify the payer of the overpayment. The overpayment shall be repaid to the affected payer according to the terms of the contract. Systems shall also be implemented and routinely monitored to prevent such overpayments in the future.

IV. Record Keeping

Regardless of whether a report is made to a governmental agency, the CO, or designee, shall maintain a record of the investigation, including copies of all pertinent documentation. This record will be considered confidential and privileged and will not be released without the approval of the County Executive or legal counsel.

Whistleblower Provisions and Protections

Chautauqua County will extend to its employees, volunteers and interns all protections afforded to them under the applicable State and Federal Whistleblower laws including the Federal False Claims Act, the New York State False Claims Act, and the New York Civil Service Law. Private contractors may find protections under the New York State Labor Law as well as the False Claims Acts.

Nothing herein shall prohibit an employee, contractor, volunteer or intern from being disciplined or sanctioned for violation of this Plan or its policies.

I. New York Civil Service Law

It is the County's intent to encourage honesty in the conduct of business. Therefore, the County relies on its employees, contractors, and agents to guard against fraud, by reporting all instances of fraud and suspected fraudulent activities to the employer. In the first instance, reports must be made to the reporter's Supervisor. If the Supervisor is not to take corrective action, or if unavailable, or is involved or suspected of being involved, the report should be made to the Department Head, the Compliance Officer, or the County Executive.

The New York State Civil Service Law prohibits the County from dismissing or taking other disciplinary or other adverse personnel action against a public employee who reports fraud, wrongdoing, or violations of the law to Chautauqua County or to another government body, as long as the employee first reports to a Supervisor. These protections apply to disciplinary proceedings, arbitration, and collective bargaining agreements where the adverse action taken by the employer is based solely on retaliation for whistleblower conduct. Where the employee who has been the subject of a retaliatory personnel action is not subject to a final and binding arbitration decision, the employee may bring a civil action in court and the court may order reinstatement of the employee to the same or an equivalent position, the reinstatement of full fringe benefits and seniority rights, and compensation for lost wages, benefits, and other remuneration including court costs and attorney fees.

II. State and Federal False Claims Acts

Where an employee reports false, fraudulent, or suspected fraudulent acts in regard to financial transactions including claims, documents, or contracts for money, goods, or services related to federally or state funded financing, and where as a result of such report, said employee suffers dismissal, disciplinary, or other adverse personnel action, the Federal or State False Claims Acts may offer remedies.

Under the Federal False Claims Act any person may bring a qui tam civil action for a violation of the Federal False Claims Act on behalf of the federal government. Furthermore, an employee may bring a qui tam lawsuit in U.S. District Court if the employee has been discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or employer because of lawful acts done by the employee in reporting a false claim to the employer or to a government body.

To obtain relief under the *Federal False Claims Act*, the whistleblower must file a lawsuit called a "qui tam" suit in Federal District Court. If the *qui tam* suit is successful, the whistleblower, known as a "qui tam relator", will be entitled to 15-30 % of the government's total recovery, which includes damages for false bills, tripled, plus civil penalties of from \$5,000 - \$10,000 per claim. For employees who have been the subject of an adverse personnel action, other relief available through successful litigation includes:

- reinstatement with the same seniority status, two times the amount of back pay, and interest on the back pay; and
- compensation for any special damages sustained including court costs and attorney fees.

To recover, the relator must have complied with complex statutory requirements. Merely providing information to a hotline will not entitle the relator to a recovery under the False Claims Act.

III. New York State False Claims Act (NYSFCA):

The NYSFCA, also referred to as a Qui Tam Statute or whistleblower law, allows a private individual (such as a County employee) to sue a person or company (including a fellow employee or employer in their individual capacity), if such person or company knowingly submits a false or fraudulent claim to a state or local government (such as New York State or Chautauqua County). Such false or fraudulent financial claims include but are not limited to health care fraud in programs such as Medicaid.

Lawsuits under this statute are called *qui tam* suits, and those reporting fraud are called "*qui tam relators*". A *relator* in a successful lawsuit may recover between 15% - 30% of the proceeds in the action or settlement of the action, depending who prosecutes the action. Employees who have been the subject of a retaliatory personnel action may also be entitled to reinstatement to their position, reinstatement of full fringe benefits and seniority rights, payment of two times back pay, plus interest and compensation for any special damages sustained including litigation costs and attorney fees.

Paul M. Wendel, Jr.
1/5/22

Paul M. Wendel, Jr.

Paul M. Wendel, Jr.
Chautauqua County Executive

7/7/22

Date