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MEMORANDUM

TO: All NYC Health + Hospitals Workforce Members
All NYC Health + Hospitals Business Partners

FROM: Catherine G. Patsos, Esq.
Chief Corporate Compliance Officer
Corporate Privacy & Security Officer

DATE: September 26, 2018

RE: **ANNUAL NOTICE: THE DEFICIT REDUCTION ACT OF 2005**

The Deficit Reduction Act ("DRA") of 2005 requires NYC Health + Hospitals (also referred to as the "System")[1] to establish written policies and procedures that inform its "Workforce Members"[2] and "Business Partners" [3] about the following:[4]

- The System's policies covering the prevention and detection of Federal health care program fraud, waste, and abuse;
- The Federal False Claims Act and any similar New York State ("NYS") law that governs false claims and statements;

[1] "NYC Health + Hospitals" and the "System" shall both mean the New York City Health and Hospitals Corporation, a public benefit corporation created pursuant to the New York City Health and Hospitals Corporation Act (McKinney's Unconsolidated Laws of N.Y. § 7381 *et seq.* (L 1969, C. 1016, eff. May 26, 1969)).
[2] Defined as employees, affiliates, personnel, medical staff members, governing body members, interns, trainees, volunteers, students, appointees, agents, and any other individuals, whether serving in a temporary or permanent capacity, who perform System duties, functions or activities on a full-time, part-time or per diem basis, whose conduct in the performance of work functions and duties on behalf of the System is under the direct control of the System, whether or not they are paid directly by the System.
[3] Defined as all non-workforce member contractors, subcontractors, vendors or other third parties who, acting on behalf of the System, deliver, furnish, prescribe, direct, order or otherwise provide Federal healthcare program items and services or who engage in activities, functions or duties that; (i) contribute to the System's entitlement to receive payment from Federal health care programs; or (ii) may place the System in a position to commit significant noncompliance with Federal health care program requirements or fraud, waste, and abuse prohibitions.
[4] *See* 42 U.S.C. § 1396a (a)(68)(A-C); *see also* Office of the Medicaid Inspector General, *Section A- DRA Program FAQS*, § A-2 (What Are the DRA Requirements) ¶ (2), available at: https://www.omig.ny.gov/images/stories/provider_compliance/dra_faqs.pdf#page=1 (accessed 9/5/18).

- The Federal administrative remedies for false claims and statements;
- Any NYS law pertaining to civil or criminal penalties for false claims and statements; and
- Whistleblower protections under Federal and state law.

Furthermore, the Office of Corporate Compliance ("OCC") is committed to ensuring that the System's Workforce Members and Business Partners are made aware of all applicable requirements under the DRA and other key laws, internal policies and Federal and state requirements, by providing initial and periodic education and training on the important topics, including but not limited to, the following:

- The goals of the System's Corporate Compliance and Ethics Program, which include the prevention of fraud, waste, and abuse, the promotion of ethical conduct, and the establishment of internal controls to prevent compliance issues and violations;
- The expectations of Workforce Members and Business Partners (*e.g.*, the adherence to the System's Principles of Professional Conduct and internal policies);
- Instructions on how Workforce Members and Business Partners can report a System compliance issue or violation;
- An overview of the System's non-retaliation/whistleblower protection policy; and
- Key fraud, waste, and abuse definitions and laws, and their related penalties and whistleblower protections.

Accordingly, the information below provides an overview of the System's policies and procedures designed to prevent and detect fraud, waste, and abuse, as well as the Federal and state laws governing false claims and statements and whistleblower protections. Additionally, annexed hereto as Appendix "A" is a summary of the key laws noted above.

I. NYC HEALTH + HOSPITALS' POLICIES AND PROCEDURES FOR DETECTING AND PREVENTING FRAUD, WASTE, AND ABUSE:

A. NYC HEALTH + HOSPITALS CORPORATE COMPLIANCE PLAN

The overall scope of the System's Corporate Compliance and Ethics Program is best reflected in its *Corporate Compliance Plan* (the "Plan"). Specifically, the Plan outlines and explains the structural and operational elements of the Corporate Compliance and Ethics Program, highlighting the System's development and adoption of written policies and procedures covering compliance (all further outlined in this memorandum), including, without limitation, NYC Health + Hospitals' Operating

Procedure 50-1 ("OP 50-1") - *Corporate Compliance and Ethics Program,* and NYC Health + Hospitals' *Principles of Professional Conduct*. The Plan also underscores NYC Health + Hospitals' commitment to routinely identify potential areas of corporate risks and vulnerabilities, and to perform self-evaluations and audits of its operations and practices, which are required under NYS's mandatory compliance program regulations.[5]

B. NYC HEALTH + HOSPITALS OP 50-1 CORPORATE COMPLIANCE AND ETHICS PROGRAM

Through the adoption of OP 50-1, the System implemented its Corporate Compliance and Ethics Program, which satisfies the mandatory provider compliance program regulatory requirements promulgated by the NYS Department of Social Services.[6] The Corporate Compliance and Ethics Program sets forth, among other things, a system for identifying, directing, and addressing System-wide compliance activities, issues, and concerns, as well as fraud, waste, and abuse activities and concerns. The following are some key requirements found in OP 50-1:

- The appointment of a Chief Corporate Compliance Officer ("CCO") charged with the oversight and implementation of the Corporate Compliance and Ethics Program;
- The creation of an annual Corporate Compliance Work Plan designed to proactively address System compliance risks and vulnerabilities;
- The institution of a confidential complaint process, and toll-free helpline (1-866-HELP-HHC) to receive and document compliance concerns and complaints;
- The implementation of a System-wide compliance and privacy training and education program;
- The requirement that all Workforce Members and Business Partners report violations of OP 50-1, as well as suspicions of violations of all applicable laws, rules, codes, and regulations;
- The investigation of allegations regarding: (i) violations of applicable laws and OP 50-1; and (ii) intimidation and retaliation for reports of such violations; and
- The prohibition of intimidation and retaliation against any individual who, acting in good faith, participates in the Corporate Compliance and Ethics Program, or reports violations thereof.

[5] *See* 18 N.Y.C.R.R. § 521.3(c)(6); *see also* NYC Health + Hospitals' Corporate Compliance Plan, at p.35.
[6] *See* 18 N.Y.C.R.R. Part 521.

C. NYC HEALTH + HOSPITALS PRINCIPLES OF PROFESSIONAL CONDUCT ("POPC")

NYC Health + Hospitals' Principles of Professional Conduct is as a guide that:

(i) Sets forth NYC Health + Hospitals' compliance expectations and commitment to comply with all applicable Federal and state laws; and

(ii) Describes the System's standards of professional conduct (*i.e*., code of conduct), and efforts to prevent fraud, waste, and abuse.

Pursuant to the POPC, all Workforce Members and Business Partners are expected to carry out their duties and functions in a lawful, professional, and ethical manner. Examples of violations of lawful, professional, or ethical conduct under the POPC include:

- Submitting false and/or fraudulent claims for health care items or services;
- Improper billing practices, including billing for items or services that are not medically necessary and or are in excess of that which is provided (*i.e*., upcoding);
- Making inappropriate patient referrals;
- Failing to promptly report and refund, as required by law, any overpayment received from a Federal health care program;
- Breaching patient confidentiality; and
- Accepting gifts from a vendor.

II. Federal and State Laws Regarding False and Fraudulent Claims, and Whistleblower Protections

In summary, the Federal False Claims Act ("FCA") and the State False Claims Act ("SFCA") impose penalties and damages on anyone who knowingly makes or causes to make a false claim for payment or a false statement or record to facilitate a false claim, or knowingly fails to deliver money belonging to the respective Federal, state or local government.[7] The FCA makes persons who commit certain fraudulent acts liable to the Federal government; and the SFCA makes persons who commit certain fraudulent acts liable to NYS and any local government within NYS.[8]

In addition, Federal and state law protects those who commence actions or pursue other measures to prevent fraudulent acts, also known as whistleblowers. Specifically, an employee or other individual who commences a FCA action is protected against threats, harassment, demotion, and suspension, as well as any other form of

[7] *See* 31 U.S.C. § 3729(a)(1)(A-G); State Finance Law § 189(1).
[8] *See, generally*, 31 U.S.C. §§ 3729 *et seq*.; State Finance Law Article XIII.

discrimination that arises as a result of such individual's commencement of an action or the implementation of other measures to stop violations of the FCA.[9] In general, relief includes: (i) reinstatement; and (ii) "2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees."[10] The SFCA under NYS Finance Law Article XIII provides similar protections and relief to individuals who commence an action or pursue other measures to stop violations of Article XIII.[11] Additional whistleblower protections are afforded under NYS Labor Law § 740, which allows employees retaliated against to bring a civil action against the employer for, among other things, injunctive relief; reinstatement; and compensation for lost wages, reasonable costs and attorney fees.[12] Additionally, a health care provider found to be acting in bad faith by a court of competent jurisdiction may be fined up to ten thousand dollars.[13] Labor Law § 741, which specifically applies to health care providers, provides similar retaliatory protections to employees.[14]

Annexed hereto as Appendix "A" is, among other things, a summary of the key Federal and state laws regarding false and fraudulent claims, and whistleblower protections with which you should be familiar.

In addition, a copy of this notice and a summary of applicable laws concerning fraud, waste, abuse, and whistleblower protections, as well as the foregoing policies and procedures may be accessed on the System's public website at http://www.nychealthandhospitals.org/policies-procedures/, or via the System's intranet by visiting the OCC's website at http://compliance.nychhc.org. You may also obtain copies of the same by contacting the OCC by phone at (646) 458-7799, or by e-mail at compliance@nychhc.org.

Thank you for taking the time to read this important message.

Attachment

[9] *See* 31 U.S.C. § 3730(h)(1).
[10] *Id* at § 3730(h)(2).
[11] *See* NYS Finance Law § 191(1); *see, also, generally* NYS Finance Law Article XIII.
[12] *See* NYS Labor Law §§ 740(4)(a), 5(a – b), and 5(d – e).
[13] *See id*. at § 740(4)(d).
[14] *See id*. at § 741(2).

APPENDIX “A”

NYC HEALTH+ HOSPITALS | CORPORATE COMPLIANCE

Compliance with the Deficit Reduction Act of 2005, Federal and State False Claims Acts, and Federal and State Laws Related to the Commission of Health Care Fraud and Whistleblower Protections Summary

I. FEDERAL LAWS

A. Deficit Reduction Act of 2005 Obligation (42 USC § 1396a(a)(68))

A State plan for medical assistance must—

(68) Provide that any entity that receives or makes annual payments under the State plan of at least $5,000,000, as a condition of receiving such payments, shall-

(A) Establish written policies for all employees of the entity (including management), and of any contractor or agent of the entity, that provide detailed information about the False Claims Act established under sections 3729 through 3733 of title 31, administrative remedies for false claims and statements established under chapter 38 of title 31, any State laws pertaining to civil or criminal penalties for false claims and statements, and whistleblower protections under such laws, with respect to the role of such laws in preventing and detecting fraud, waste, and abuse in Federal health care programs (as defined in section 1320a–7b(f) of this title);
(B) Include as part of such written policies, detailed provisions regarding the entity's policies and procedures for detecting and preventing fraud, waste, and abuse; and
(C) Include in any employee handbook for the entity, a specific discussion of the laws described in subparagraph (A), the rights of employees to be protected as whistleblowers, and the entity's policies and procedures for detecting and preventing fraud, waste, and abuse.

B. Federal False Claims Act (31 USC §§ 3729-3733)

The Federal False Claims Act ("FCA") provides, in pertinent part, as follows:

§ 3729. False claims

(a) Liability for certain acts.—

(1) In general.-Subject to paragraph (2), any person who-

(A) Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;

(B) Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;

(C) Conspires to commit a violation of subparagraph (A), (B), (D), (E), (F), or (G);

(D) Has possession, custody, or control of property or money used, or to be used, by the Government and knowingly delivers, or causes to be delivered, less than all of that money or property;

(E) Is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(F) Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge property; or

(G) Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government,

is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 USC 2461 note; Public Law 104–410), plus 3 times the amount of damages which the Government sustains because of the act of that person.[1]

(2) Reduced damages.-If the court finds that-

(A) The person committing the violation of this subsection furnished officials of the United States responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;

(B) Such person fully cooperated with any Government investigation of such violation; and

[1] See reference to increased penalty amounts in Section C below.

(C) At the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation, the court may assess not less than 2 times the amount of damages which the Government sustains because of the act of that person.

(3) Costs of civil actions.-A person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages.

(b) Definitions.--For purposes of this section—

(1) The terms "knowing" and "knowingly" -
(A) Mean that a person, with respect to information-
(i) has actual knowledge of the information;
(ii) acts in deliberate ignorance of the truth or falsity of the information; or
(iii) acts in reckless disregard of the truth or falsity of the information; and
(B) require no proof of specific intent to defraud;

(2) The term "claim" -
(A) Means any request or demand, whether under a contract or otherwise, for money or property and whether or not the United States has title to the money or property, that-
(i) is presented to an officer, employee, or agent of the United States; or
(ii) is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the Government's behalf or to advance a Government program or interest, and if the United States Government-
(I) provides or has provided any portion of the money or property requested or demanded; or
(II) will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded; and
(B) Does not include requests or demands for money or property that the Government has paid to an individual as compensation for Federal

employment or as an income subsidy with no restrictions on that individual's use of the money or property;

(3) The term "obligation" means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment; and

(4) The term "material" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

(c) Exemption from disclosure.--Any information furnished pursuant to subsection (a)(2) shall be exempt from disclosure under section 552 of title 5.

(d) Exclusion.--This section does not apply to claims, records, or statements made under the Internal Revenue Code of 1986.

In sum, the FCA imposes liability on any person who submits a claim to the federal government, or submits a claim to entities administering government funds, that he or she knows (or should know) is false. The FCA also imposes liability on an individual who knowingly submits a false record in order to obtain payment from the government, or who receives and retains money from the Federal government to which he/she is not entitled.

While the FCA 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.[2] In addition to its substantive provisions, the FCA provides that private parties may bring an action on behalf of the United States.[3] These private parties, known as "*qui tam* relators," may share in a percentage of the proceeds from a 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, §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 of the proceeds of the FCA action.

[2] *See* 31 USC 3729(b).
[3] *See* 31 USC 3730 (b).

C. Administrative Remedies for False Claims (31 USC §§ 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, the agency receiving the claim may impose a penalty of up to $10,957 for each claim, further adjusted for inflation. The agency may also recover twice the amount of the claim.** Unlike the FCA, a violation of this law occurs when a false claim is submitted rather than when it is paid. Also unlike the FCA, 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.

***For penalties assessed after February 3, 2017, whose associated violations occurred after November 2, 2015, the FCA civil penalty increases to a range of $10,957 to $21,916 per claim. In addition, the Administrative Remedies civil penalty increased to $10,957 per claim.*[4]

II. NEW YORK STATE LAWS

New York State laws governing false and fraudulent claims fall under the jurisdiction of both New York's civil and administrative laws, as well as its criminal laws. Some apply to beneficiary false claims and some apply to provider false claims. The majority of these statutes are specific to health care or Medicaid fraud.

A. CIVIL AND ADMINISTRATIVE LAWS

1) New York False Claims Act (State Finance Law §§ 187-194)

The New York False Claims Act is similar to the Federal FCA, and imposes penalties and fines upon individuals and entities who knowingly file false or fraudulent claims for payment from any state or local government, including health care programs such as Medicaid. It also has a provision regarding reverse false claims similar to the Federal FCA such that a person or entity will be liable in those instances in which the person obtains and retains money from a state or local government to which he may not be entitled.

The penalty for filing a false claim under the state False Claims Act is six to twelve thousand dollars per claim plus three times the amount of the damages that the state or local government sustains because of the act of that person. In addition, a person who

[4] *See 82 FR 9131 (Feb. 3, 2017).*

violates this act is liable for costs, including attorneys' fees, of a civil action brought to recover any such penalty.

The state False Claims Act allows private individuals to file lawsuits in state court, just as if they were state or local government parties, subject to various possible limitations imposed by the New York State Attorney General or a local government. If the suit is successful, the person who started the case can recover twenty-five to thirty percent of the proceeds if the government did not participate in the suit, or fifteen to twenty-five percent if the government did participate in the suit.

2) Social Services Law, Section 145-b - False Statements

Under § 145-b of the New York Social Services Law, it is illegal 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, and the New York State Department of Health may impose a civil penalty of up to ten thousand dollars per violation. If repeat violations occur within five years, a penalty of up to thirty thousand dollars per violation may be imposed if the repeat violations involve more serious violations of Medicaid rules, billing for services not rendered, or providing excessive services.

3) Social Services Law, Section 145-c - Sanctions

Under § 145-c of the New York Social Services Law, if any individual applies for or receives public assistance, including Medicaid, by intentionally making a false or misleading statement, or intending to do so, neither the needs of the individual nor of his/her family shall be taken into account for the purpose of determining his/her needs or that of his/her family. This penalty shall be in effect for six months if a first offense, for twelve months if a second offense (or if benefits wrongfully received are at least one thousand dollars but not more than three thousand nine hundred dollars), for eighteen months if a third offense (or if benefits wrongfully received are in excess of three thousand nine hundred dollars), or five years for any subsequent occasion of any such offense.

B. CRIMINAL LAWS

1) Social Services Law, Section 145 - Penalties

Pursuant to § 145 of the New York Social Services Law, any person who submits false statements or deliberately conceals material information in order to receive public assistance, including Medicaid, is guilty of a misdemeanor.

2) Social Services Law, Section 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 a 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.

3) 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. This statute 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.

4) 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.

5) Penal Law Article 176 - Insurance Fraud

This law applies to claims for insurance payments, including Medicaid or other health insurance, and incorporates 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.

6) Penal Law Article 177 - Health Care Fraud

This statute, enacted in 2006, applies to health care fraud crimes. It was designed to address the specific conduct by health care providers who defraud the health care system, including any publicly or privately funded health insurance or managed care plan or contract, under which any health care item or service is provided. Medicaid is considered to be a single health plan under this statute.

This law primarily applies to claims by providers for insurance payment, including Medicaid payment, and it includes six crimes.

a. Health care fraud in the 5th degree – a person is guilty of this crime when, with intent to defraud a health plan, he or she knowingly and willfully provides materially false information or omits material information for the purpose of requesting payment from a health plan. This is a class A misdemeanor.

b. Health care fraud in the 4th degree – a person is guilty of this crime upon filing such false claims on more than one occasion and annually receives more than three thousand dollars. This is a class E felony.

c. Health care fraud in the 3rd degree – a person is guilty of this crime upon filing such false claims on more than one occasion and annually receiving over ten thousand dollars. This is a class D felony.

d. Health care fraud in the 2nd degree - a person is guilty of this crime upon filing such false claims on more than one occasion and annually receiving over fifty thousand dollars. This is a class C felony.

e. Health care fraud in the 1st degree - a person is guilty of this crime upon filing such false claims on more than one occasion and annually receiving over one million dollars. This is a class B felony.

III. WHISTLEBLOWER PROTECTIONS

A. Federal False Claims Act (31 USC § 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.[5] 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.

B. New York False Claim Act (State Finance Law § 191)

The New York 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 False Claims Act. Remedies include reinstatement with comparable seniority as the *qui tam* relator would have had but for the discrimination,

[5] 31 USC 3730(h).

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.

C. New York State Labor Law, § 740

An employer may not take any retaliatory action against an employee if the employee discloses to a regulatory, law enforcement or other similar agency or public official an activity, policy or practice of the employer that is in violation of law, rule or regulation that creates and present a substantial and specific danger to the public health or safety, or which constitutes health care fraud. An employee is also protected from retaliatory action if the employee objects to, or refuses to participate in any such activity, policy or practice in violation of a law, rule or regulation. The employee is protected from retaliatory action only if the employee first raised 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 care provider, and the court finds that the employer's retaliatory action was in bad faith, the court may impose a civil penalty of $10,000 on the employer.

D. New York State Labor Law, § 741

A health care employer may not take any retaliatory action against an employee if the employee discloses to a regulatory, law enforcement or other similar agency or public official the employer's policies, practices or activities that the employee believes in good faith constitute improper quality of patient care. An employee is also protected from retaliatory action by an employer for objecting to, or refusing to participate in any activity, policy or practice of the employer that the employee, in good faith, reasonably believes constitutes improper quality of patient care. The employee is protected from retaliatory action only if the employee first raised 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 care provider and the court finds that the employer's retaliatory action was in bad faith, the court may impose a civil penalty of $10,000 on the employer.