

#### **XIV. REGULATORY COMPLIANCE PLAN**

**ACMH, Inc.**

Revised February 2023

## **ACMH REGULATORY COMPLIANCE PLAN**

### **Article 1**

#### **False Claims Act and Whistleblower Policies**

It is the policy of ACMH to consistently and fully comply with all laws and regulations pertaining to the delivery of and billing for services which apply to ACMH on account of its participation in the Medicaid or any other state or federal program. As per ACMH's False Claims Act Policy, the federal False Claims Act is violated if a person 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 federal government. A similar New York State False Claims Act covers claims submitted to state or local government agencies. Several other New York State laws also prohibit the making of false claims and statements. All Affected Individuals and contractors are strictly prohibited from engaging in any conduct that violates the False Claims Act and related laws and regulations. Affiliated Affected Individuals will report the preparation or submission to Medicaid or any other state or federal or private program of any claim or report that appears to be false or fraudulent, or any other conduct that appears to violate the False Claims Act. Affected Individuals may make such reports through any of the mechanisms described in Article 8, "Procedures for Reporting Concerns and/or Complainants."

ACMH has developed and instituted this Regulatory Compliance Plan, which is intended to summarize the guidelines, principles, and procedures through which ACMH management requires that all Affected Individuals comply at all times with established professional and ethical standards, ACMH policies, and Applicable Law.

### **ARTICLE 2**

#### **WRITTEN POLICIES AND PROCEDURES**

ACMH has adopted a Regulatory Compliance Plan to detect and prevent fraud, waste and abuse. The Regulatory Compliance Plan outlines the operation of the compliance program, includes specific procedures for identifying, reporting, investigating and correcting improper activity. Additionally, ACMH shall comply with the provisions of 42 U.S.C. 1396a(a)(68), also known as the Deficit Reduction Act (DRA.) All Affected individuals mean all persons who are affected by the required provider's risk areas including employees, the chief executive and other senior administrators, managers, contractors, agents, subcontractors, independent contractors, governing body and corporate offices. Affected individuals are expected to promptly report any suspected fraud, abuse or other misconduct in their applicable risk area. ACMH has established a Compliance Hotline that enables Affected individuals to make such reports on an anonymous basis. All employees, contractors providing direct client services, volunteers and board members receive basic compliance training within the first 30 days of hire, during which they receive a copy of and review the Regulatory Compliance Plan and Corporate Compliance Manual. Annual refresher training is also provided. In addition, ACMH has adopted more detailed policies governing the proper performance of sensitive functions such as billing and record keeping that

are made available to Affected individuals-engaged in such activities. ACMH Compliance Officer reviews the Regulatory Compliance Plan at least annually and modifies, as to remain current with legal and other current developments.

### **ARTICLE 3**

#### **OVERSIGHT RESPONSIBILITY FOR THE COMPLIANCE PLAN**

##### **3.1 Board & Management Responsibility**

ACMH has designated a Compliance Officer and a Corporate Compliance Committee to be responsible for overseeing, implementing, and managing the day-to-day operation of the Regulatory Compliance Plan. The Executive Vice President and the Board of Directors shall be kept informed of progress, violations, and actions undertaken in response to detected violations. Conformity with the Regulatory Compliance Plan and its related activities will be of the highest priority throughout the organization and will be endorsed by the Executive Vice President, Corporate Compliance Committee, and ACMH Board of Directors. ACMH Management shall be responsible for carrying out the overall objectives of the Regulatory Compliance Plan, and providing Affected Individuals with appropriate training of their responsibilities in complying with the Regulatory Compliance Plan.

##### **3.2 Corporate Compliance Committee Charter**

The Corporate Compliance Committee shall include senior managers from operations, finance, human resources, and behavioral health professions and shall be headed by the Compliance Officer. This Committee will coordinate with the Compliance Officer to ensure it is conducting business in an ethical and responsible manner consistent with its compliance program. The Compliance Committee will oversee, review and implement the policies and activities and results related to the Regulatory Compliance Plan. The Compliance Officer will report to the Compliance Committee all regulatory non-compliance, results of investigations, any corrective actions taken, results or anticipated internal and external audits, as well as regulatory noncompliance trends and patterns. The Committee will review the Charter on an annual basis. The Committee convenes on a quarterly basis and will report directly to the Executive Vice President, reporting periodically, but no less than annually, to the Board of Directors.

##### **3.3 Authority & Responsibility of Compliance Officer for Regulatory Compliance Operations**

The Compliance Officer shall be responsible for overseeing and implementing the Regulatory Compliance Plan and shall be responsible to the Executive Vice President and regularly report to the Board of Directors. The Compliance Officer will meet regularly with the Executive Vice President to review issues, activities, and progress related to the Regulatory Compliance Plan.

The Compliance Officer shall be an individual with sufficient authority to promote, administer, and enforce the Regulatory Compliance Plan, and will serve as the overall coordinator for all compliance activities of ACMH, responsible for the day to day operation of the compliance program. ACMH ensures the Compliance Officer is allocated sufficient staff and resources to satisfactorily perform their responsibilities based on the risk areas and organizational experience. The Compliance Officer is provided access to all

records, documents, information, facilities and affected individuals in accordance to fulfilling relevant responsibilities.

The Compliance Officer shall be primarily responsible for the following activities and tasks:

- 3.3.1** Overseeing and monitoring the implementation of the Regulatory Compliance Plan, as well as assisting in improving efficiency, quality of services and reducing fraud, waste and abuse ;
- 3.3.2** Developing an annual compliance work plan, including reporting the progress of implementing the various elements and components of the Regulatory Compliance Plan to the Corporate Compliance Committee
- 3.3.3** Reviewing at least annually and revises the Regulatory Compliance Plan to incorporate changes in Applicable Law, ACMH policies, or other guidance of Federal, State, and private healthcare payers Compliance Officer will review all proposed policy changes with the Executive Vice Present and upon approval will update policies and post on the intranet, as well as to alert affected individuals in writing;
- 3.3.4** Developing, coordinating, and participating in an educational and training program that focuses on the elements of the Regulatory Compliance Plan and seeking to ensure that all Affected Individuals, Contracted Parties, Volunteers, and Interns are knowledgeable of, and comply with, ACMH Policies and Applicable Law;
- 3.3.5** Independently investigating and acting on matters related to Medicaid compliance, including coordinating and conducting of internal investigations (e.g., responding to reports of known or suspected violations of the Regulatory Compliance Plan) and reviewing any resulting corrective action within all ACMH programs;
- 3.3.6** Planning and overseeing periodic internal audits of ACMH's operations in order to evaluate compliance with ACMH Policies and Applicable Law as it pertains to Medicaid or other state or federal programs.
- 3.3.7** Maintaining a well-publicized program for reporting known or suspected violations of the Regulatory Compliance Plan that encourages Affected Individuals to report suspected fraud and other improprieties without fear of retaliation;
- 3.3.8** Working with ACMH Management in the preparation, development, and implementation of written guidelines on specific issues under Applicable Law, including matters involving unethical business practices;
- 3.3.9** Working with ACMH Management to develop and implement an education program for Affected Individuals to enhance their understanding of Applicable Law, including, without limitation, documentation, coding and billing practices with respect to requests for payments and/or reimbursements from Medicaid or other state or federal or private programs.

- 3.3.10** Reviewing all documents and other information that are relevant to regulatory compliance activities, including, but not limited to, billing records, charts, and personnel files;
- 3.3.11** Preparing, at least annually, a summary report of the Compliance Office which evaluates the program's effectiveness and contains all reports of regulatory non-compliance, the results of all investigations and any corrective action taken, the results or anticipation of internal audits, any regulatory non-compliance patterns or trends identified, and an assessment of the Regulatory Compliance Program to the Corporate Compliance Committee and Board of Directors;
- 3.3.12** Performing such other duties and responsibilities pertaining to regulatory compliance as the Board of Directors, Corporate Compliance Committee, or the Executive Vice President may request.

### **3.4 Affected Individuals Responsibility**

Responsibility for the Regulatory Compliance Plan includes not only the commitment of the Board of Directors and ACMH Management, but also the participation and commitment of all ACMH Employees, Interns, Volunteers, and Contracted Parties. Contractors are only subject to ACMH's compliance program to the extent it is related to their contracted role and responsibilities within ACMH's identified risk area. Employees, Interns, Volunteers, and Contracted Parties shall be expected to conduct themselves in a manner that comports with the highest ethical standards and is consistent with all Applicable Law and all ACMH policies as they relate to mandatory compliance programs.

### **3.5 Annual Certification**

Required providers must certify annually, in a form and manner required by OMIG and DOH, that the required provider has met SSL 363-d and Part 521 requirements. In preparation for the annual certification the Compliance Officer will complete an effectiveness review of the compliance program and review with the Executive Vice President.

## **ARTICLE 4 ETHICAL CONDUCT**

### **4.1 Code of Conduct**

ACMH expects employees, interns, volunteers, and Contracted Parties to maintain honesty, integrity and concern for the safety and welfare of agency clients and employees. All ACMH Affected individuals have the ethical responsibility to conduct business in a manner that supports integrity in operations and to report instances of non-compliance and improper activities in addition to refraining from such activity which might be considered unethical. It is the expectation that such reports will be made promptly. Every Affected individual has an affirmative duty to ACMH and to our consumers to report actions or behaviors they feel violate the Code of Conduct, procedure, law or regulation. Any individual

who fails to report misconduct or illegal behavior may be subject to disciplinary procedures up to , and including termination. ACMH's Code of Conduct is contained in its entirety in the Corporate Compliance Manual. Additionally, the Code of Conduct specifies the following concerning documentation and claim submissions.

It is ACMH policy to maintain and submit accurate and honest records pertaining to all billing and reporting to our payers, including Medicaid, and to comply with all laws and regulations relating to Medicaid funding and all other government and private funding. All employees who document any services shall do so honestly, describing the actual service rendered.

ACMH employees are strictly prohibited from directly and indirectly engaging or participating in any of the following activities:

Submission of Improper Claims – Presenting or causing to be presented to the United States government, any other payer, government agency or funding source a claim for a medical or other service that was not provided as claimed and such violations were committed either knowingly, or with reckless disregard of the truth.

Fraudulent Statements – Making, using or causing to be made or used any false record, statement or representation of material fact for use in determining rights to any benefit or payment under any government or private program or service; or executing or attempting to execute a scheme or artifice to defraud any government or private benefit program, or to obtain, by means of false, fictitious or fraudulent pretenses, representations or promises, any of the money or property owned by, or under the custody of, any government or private benefit program.

Failure to Report Violations – Failing to report any instance of conduct of which the ACMH employee knows or suspects to be a violation of the Regulatory Compliance Plan or should, in the ordinary course of carrying out his/her duties, know to be a violation of the Regulatory Compliance Plan.

## **ARTICLE 5**

### **RECORDS, DOCUMENTATION, AND BILLING**

#### **5.1 Privacy and Confidentiality**

ACMH policies provide for maintaining the confidentiality of the records of persons served and complying with related privacy requirements under Applicable Law. Additionally, ACMH has specific guidelines for responding to requests for information about persons served and responding to judicial subpoenas.

#### **5.2 Accuracy of Records**

ACMH expects its employees, volunteers, contracted individuals to maintain and administer records with accuracy, reliability, and honesty at all times and in all circumstances. Specifically, all affected individuals are required to make every effort to ensure the accuracy of their own work and report inaccuracies in any ACMH record of which they are aware. Affected individuals are prohibited from creating any documentation in the records of ACMH that to the best of their knowledge is incomplete, inaccurate and/or fraudulent.

### **5.3 Records Retention**

ACMH administers a records management program to ensure that its records are maintained and stored in accordance with various records retention standards and requirements documented in the ACMH Records Retention and Destruction Policy. Among other records which are part of the records management program, ACMH shall retain various clinical, medical records, billing, claims, financial, and other records in accordance with the requirements of the Regulatory Compliance Plan.

### **5.4 Billing and Coding**

ACMH expects that all employees involved in the coding, billing, documentation and accounting for services for the purpose of billing governmental, private or individual payers will comply with all Applicable Law and ACMH policies. Specifically, ACMH requires its Affected Individuals to:

- 5.4.1** Bill only for services actually provided and to seek only the amount to which ACMH is entitled. ACMH will not tolerate billing that misrepresents the services actually provided.
- 5.4.2** Prepare supporting documentation for all services provided to persons served. ACMH shall bill on the principle that if the appropriate and required documentation has not been prepared, then the services have not been provided.
- 5.4.3** Accurately and completely code claims based on information in the record and supporting documentation of the persons served and submit any claims to the appropriate payer in accordance with Applicable Law and ACMH policies.
- 5.4.4** Charge all persons served in a consistent and uniform manner except as otherwise provided herein. Discounts will be given only when permitted by Applicable Law .
- 5.4.5** Charge government-sponsored payers at no higher rate than ACMH's usual charges to others. ACMH will abide by each Medicaid MCO's policies to the extent the policies for fraud, waste and abuse are relevant to ACMH billing practices. Any questions regarding the interpretation of this standard should be directed to the Compliance Officer.
- 5.4.6** Process all credit balances in a timely manner in accordance with Applicable Law. If an audit identifies any credit balances, ACMH shall direct those issues to the Compliance Officer.
- 5.4.7** Participate in training on ACMH policies and Applicable Law regarding those activities for which ACMH is responsible with respect to coding, billing and documentation. ACMH shall provide these Affected Individuals with opportunities for training to allow them to accurately code, document, and bill according to Applicable Law and ACMH policies. The Compliance Officer and Director of Finance and Administration shall establish appropriate evaluation processes to assess whether such Affected Individuals understand and carry out such procedures correctly.

## **ARTICLE 6**

### **EDUCATION AND TRAINING**

ACMH regularly communicates its Regulatory Compliance standards and policies to employees, contractors, volunteers and board members through the implementation of various education and training initiatives. Compliance training may be customized for different types of Affected Individuals, including contractors, based upon specific issues for each type, as long as all Affected Individuals meet the core training requirements of the Medicaid compliance program. Compliance training will be provided in a manner that is understandable and accessible to all Affected Individuals.

ACMH shall regularly update its training policies and programs to ensure that they are current, consistent with Applicable Law and provisions of the Regulatory Compliance Plan, and incorporate the findings and results of ACMH's ongoing evaluation, auditing, and monitoring of the Regulatory Compliance Plan.

The sections that follow highlight the scope and range of the education and training activities implemented as part of the Regulatory Compliance Plan and which may be included in the annual compliance training plan.

#### **6.1 Compliance Orientation Program**

A Regulatory Compliance Plan and Corporate Compliance Manual orientation program will be provided to all new and current Affected Individuals of ACMH. The Corporate Compliance Manual includes an overview of the general provisions of the Regulatory Compliance Plan, ACMH's Code of Conduct, as well as a review of ACMH policies. The Regulatory Compliance Plan details specific components and procedures as well as Applicable Law. In addition, there will be a discussion, and review of the applicable responsibilities of Affected Individuals in complying with the provisions of the Regulatory Compliance Plan. All Affected Individuals will be provided with a copy of the Corporate Compliance Manual and Regulatory Compliance Plan and will be instructed on how to access both via electronic means through ACMH's intranet. All newly hired employees will be required to participate in the Compliance Orientation program within the first week of beginning work for the organization. New Board of Director members receive training on the Regulatory Compliance Plan, oversight responsibilities and reporting mechanisms prior to their 2<sup>nd</sup> Board meeting. Board of Directors, Affected Individuals and applicable vendors, receive annual compliance training.

#### **6.2 Continuing Education**

The Compliance Officer shall oversee the development and scheduling of continuing education courses and refresher training programs periodically throughout the year to ensure that ACMH Affected Individuals keep informed of current practices and changes related to the Regulatory Compliance Plan, policies, and Applicable Law.

#### **6.3 Specialty and Topic-Specific Training**

Employees or volunteers/contracted workers assigned to particularly sensitive positions or functions may require additional topic specific training. Such targeted specialty and topic-specific training



may be identified through the Compliance hotline, and/or the ongoing audits and reviews of the Regulatory Compliance Plan. The need for additional training may also be determined as a result of new requirements promulgated under Applicable Law. It will be the responsibility of the Compliance Officer to identify, coordinate delivery and evaluate such specialty and such topic-specific training as necessary and required. Copies of signed staff attendance records for these specialty trainings will be forwarded to the Compliance Officer and maintained in central Compliance Education files.

Vendors who receive client information for the purpose of payment and operations on the organization's behalf are required to undergo annual compliance training. The purpose of the vendor fraud, waste and abuse training is to provide education on the ACMH compliance program and reinforce the vendor's obligation to report fraud, waste and abuse concerns to the Compliance Officer. All vendors are required to return to the Compliance Officer a signed Acknowledgement of Receipt that training was received. It is the responsibility of the Compliance Officer to identify vendors, coordinate delivery of training materials and maintain database of signed attestations.

#### **6.4 Corporate Compliance Manual and Regulatory Compliance Plan**

All Affected Individuals of ACMH will be provided a copy of the Corporate Compliance Manual and Regulatory Compliance Plan and will be expected to sign and return Acknowledgement Forms for each. Each form will be an acknowledgement that the employee has received and reviewed the Corporate Compliance Manual or Regulatory Compliance Plan and fully understands his/her obligation to adhere to policies and procedures described. The Compliance Officer shall monitor the return of the Acknowledgement Forms from all Affected Individuals and a copy maintained in central Compliance Education files. Should an Affected individual fail to return an Acknowledgement Form within the prescribed timeframe, this shall be considered non-compliance with the Regulatory Compliance Plan such as to require that appropriate disciplinary action is implemented.

## **ARTICLE 7**

### **AUDITS AND MONITORING OF THE COMPLIANCE PLAN**

ACMH shall implement the necessary management systems and controls to ensure the overall integrity of the Regulatory Compliance Plan and monitor all applicable activities and compliance requirements.

#### **7.1 Annual Review of Compliance Plan**

The Compliance Officer shall perform a comprehensive review of the Regulatory Compliance Plan not less than once a year. The scope of this review shall be the identification of compliance risk areas specific to ACMH's program types and operations. The review will address ACMH's compliance with Title 18, SubPart 521-1, in addition to laws governing billing, coding, claim development and submission, and reimbursement. The review will report on any regulatory compliance audits and investigations in addition to: on-site visits, interviews with affected individuals, review of records, surveys, and any other appropriate method (provided it does not compromise the independence or integrity of the

review.) A summary report, including findings, results and recommendations for revisions or corrective actions will be submitted to the Corporate Compliance Committee, Executive Vice President and Board of Directors.

## **7.2 Calendar of Regulatory Audits**

On an annual basis, the Compliance Officer will develop a schedule for regulatory audits for the upcoming year. The schedule will specify the subject of each audit, the audit methodology, the time period during which the audit will be carried out and the personnel or contractors to be used to perform the audit. All internal auditors or contractors will have expertise in state and federal Medicaid program requirements and applicable laws or have expertise in the subject area of the audit. The Compliance Officer will select audit subjects based on the level of risk associated with the subject, any prior history of violations, the length of time that has passed since the most recent audit on the same subject and the cost of performing the audit. Upon completion of an audit, the Compliance Officer will arrange for the preparation of a written audit report. The report will set forth the subject of the audit, the audit methodology, the audit findings and any recommended corrective action. The report will be provided to the Compliance Committee, the Executive Vice President and appropriate Senior Managers or Program Directors to ensure that all recommended corrective action is taken. Program Directors or Senior Managers responsible for implementation of corrective action will be required to report to the Compliance Officer when implementation is completed.

## **7.3 Audits by Outside Parties**

In addition to internal reviews and audits, ACMH's operations and programs are regularly subject to review, inspection and audit by outside parties. To the extent that the findings resulting from such audits relate to activities and standards covered by the Regulatory Compliance Plan, such findings shall be reported to the Corporate Compliance Committee, Compliance Officer and Executive Vice President, who in turn will arrange for reporting to the Board of Directors

## **7.4 Review of Billing Denials and Client Complaints**

The Fiscal Department will periodically review denials from Medicaid and Managed Care Organizations in order to determine whether any patterns of improper billing exist that need correction. In addition, the CO will also keep track of billing complaints from clients to determine whether such complaints reflect the existence of possible patterns of improper billing or other compliance issues.

## **7.5 Review of Compliance Issues**

As necessary, the CO will review reports received of suspected violations of the Compliance Plan and/or Code of Conduct to determine if there are any patterns of violations that might indicate broader compliance issues. All Compliance issues are expected to be reviewed and corrected promptly and thoroughly.

## **7.6 Business Reviews**

Periodically, the CO or designee, will spot check ACMH's business practices to ensure compliance with applicable laws, rules and regulations. Such checks might include a review of ACMH's credit balance and the fair market value of leases, equipment rental agreements, or personal service contracts with other providers.

## **7.7 Exclusion Checks**

ACMH is committed to using good faith efforts to not employ, contract or affiliate with individuals or entities that are currently excluded, debarred or otherwise ineligible to participate in federal health care programs (including, but not limited to, Medicare and Medicaid) or in federal procurement or non-procurement programs. ACMH is also committed to using good faith efforts to not employ, contract or affiliate with individuals or entities that have been convicted of a federal or state offense relating to a federal health care program.

ACMH has contracted with K-Checks to perform the monthly exclusion checks for all Affected individuals, vendors and allied health professionals. They will run the following checks on a monthly basis: OIG Exclusion Database, Sam.Gov/ EPLS (Excluded Parties List System), Treasury Consolidated Sanction List, The Office of Foreign Assets Control (OFAC) of the US Department of Treasury, and NY OMIG's List of Restricted, Terminated or Excluded Individuals or Entities. K-Checks will send an email to the ACMH CO and Director of Human Resources regarding the results of the exclusion check.

In order to ensure compliance with the above policy, ACMH will, at minimum, take the following actions:

### **7.7.1 Procedures for Determining Ineligibility**

**7.7.1.a New Affected Individuals/Contractors.** Before hiring or retaining any individual or entity, ACMH Human Resource Department will check their names against the Exclusion Lists. If an individual's/entity's name appears on any Exclusion List, any offer of employment must be withdrawn and the individual/entity may not be hired or contracted with unless satisfactory evidence is presented that he/she:

- ❖ Is not the individual/entity who appears on the Exclusion List(s); or
- ❖ The charges have been resolved and it is clear that the individual has been reinstated to the Federal Health Care Program or is otherwise eligible to enter into federal contracts.

**7.7.1.b Existing Employees/Volunteers/Contractors.** The Human Resources Department is responsible for maintaining the active employee file within the K-Checks database for ACMH. They will update the file on a monthly basis to ensure that all current staff is included in the exclusion check.

**7.7.1.c Allied Health Professionals.** The Director of Intake and Transitions is responsible for maintaining the active allied health professional file within the K-Checks database for ACMH. They will update the file on a monthly basis to ensure that all current allied health professionals are included in the exclusion check. They will receive confirmation from K-Checks that the monthly check was completed. If an individual's/entity's name appears on any Exclusion List, ACMH will follow the

procedures set forth in this policy.

7.7.1.d Vendors. Prior to doing business with, or entering into a contract with, any vendor who is directly involved in the provision of services (including a vendor that has previously had a contract) will be checked against the Exclusion Lists by the Finance Department. If the proposed vendor appears on any list, ACMH may not enter into a contract or consulting agreement with the vendor unless the vendor provides satisfactory evidence that:

- It is not the individual/entity that appears on the Exclusion List(s); or
- The charges have been resolved and it is clear that the vendor has been reinstated to the Federal Health Care Program.

7.7.1.e Monthly Check. The Compliance Officer will ensure that all current employees, volunteers, contractors, allied health professionals and vendors are included on the K-Checks database file. On a monthly basis, the Compliance Officer, or Designee will receive confirmation from K-Checks that the review has been completed and will check the names of all individuals and entities against the Exclusion Lists. If the name or entity appears on any Exclusion List, ACMH will ensure:

- It is not the individual/entity that appears on the Exclusion List(s); or
- The charges have been resolved and it is clear that the vendor has been reinstated to the Federal Health Care Program.

#### 7.7.2 Reports

At least annually, the Compliance Officer will report the results of the monthly checks against the Exclusion Lists to the Compliance Committee and Board of Directors and whether any corrective action had to be instituted.

#### 7.7.3 Documentation

The Compliance Officer will maintain exclusion verification files for each calendar year. The Compliance Officer, or designee will maintain records of the above reviews and any investigations, corrective action and/or disciplinary action taken. Employee records will be maintained in the Human Resources Department, in the individual's personnel file or in another appropriate file.

### 7.8 Responses to Reviews

If any of these reviews indicate that possible compliance issues might exist, the CO will inform the Executive Vice President and the Compliance Committee. A determination will be made promptly as to

whether a further investigation is required and whether ACMH's billing or business practices need to be modified or improved in any way to ensure continuing compliance with applicable federal and state laws and regulations.

### **7.9 Tracking New Developments**

On a continuing basis, the CO or designee, will ensure that all new regulatory or legal requirements issued by the federal or state government are reviewed by appropriate personnel. This includes the following:

- Reviewing all new rules governing the documentation and billing of services provided by ACMH;
- Receiving and reviewing all Medicare bulletins, Medicaid updates, annual updates to the Current Procedural Terminology (CPT), or other relevant announcements;
- Communicating with the trade associations as to recent initiatives or developments that might affect ACMH, or new practices that might assist ACMH in complying with applicable rules and regulations; and
- Reviewing all new Special Fraud Alerts and relevant Advisory Opinions issued by the Office of the inspector General, and pronouncements and guidance issued by the New York State Office of Medicaid Inspector General.

Based on any relevant new developments, the CO, in conjunction with the Compliance Committee, will review existing policies and procedures to ensure that ACMH is in compliance with the requirements of federal and state law. If necessary, the CO and the Compliance Committee will then work to ensure that appropriate corrective action is taken.

## **ARTICLE 8**

### **PROCEDURES FOR REPORTING CONCERNS AND/OR COMPLAINTS**

All Affected Individuals are responsible for promptly reporting known or suspected violations of the Regulatory Compliance Plan whether committed by that workforce member or by someone else. Failure to report is contrary to this expectation and will be considered a violation of the compliance program. Affected individuals, as well as Medicaid recipients of ACMH services have several options for reporting fraudulent, abusive or other improper conduct. Individuals may file reports with their supervisor or Program Director, the Compliance Officer or any other member of the Corporate Compliance Committee with whom the individual feels comfortable. Supervisors, management and committee members are required to report issues to the Compliance Officer. These reports can be made in person, via email, over the phone or anonymously via the Compliance Hotline discussed in Section 8.1. Lines of communication are open to all affected individuals and allow for questions to be asked regarding compliance issues and allow issues to be reported. ACMH will make reasonable efforts to protect the

identity of any individuals filing non-anonymous reports except when disclosure of the individual's identity is necessary to conduct an effective investigation.

### **8.1 Compliance Hotline**

ACMH has established a telephone hotline that affected individuals and Medicaid recipients of service from ACMH may call to file reports anonymously. The hotline may be accessed by calling \*67 1-212-274-8558 ext.250. The phone number will be blocked when entering \*67 prior to dialing ensuring an anonymous call that does not include a caller ID. This line is not answered and your message will be sent directly to the Compliance Officer via a computer generated email. The Compliance Officer is responsible for overseeing the operation of the hotline, responding to complaints filed through the hotline and ensuring that all affected individuals are aware of the hotline number and understand that reports may be filed through the hotline on an anonymous basis. The Compliance Officer will also publicize the availability of the hotline through regular reminders, posters and organized compliance awareness events.

### **8.4 Confidentiality of Reports/Complaints**

Persons, including Medicaid recipients of service, who report compliance issues should have a reasonable expectation that their communication will be kept confidential, whether requested or not. Such persons are protected under the ACMH non-intimidation and non-retailation policies. While ACMH will endeavor to protect the confidentiality of those affected individuals electing to make an anonymous report, there may be circumstances where the identity of someone making an anonymous report and/or complaint may become known or may have to be disclosed if deemed necessary in order to comply with Applicable Law. The confidentiality of persons reporting compliance issues shall be maintained unless the matter is subject to a disciplinary proceeding; referred to, or under investigation by MFCU, OMIG or law enforcement; or disclosure is required during a legal proceeding; and such persons shall be protected under the ACMH non-intimidation and non-retailation policies.

### **8.5 Responding to Reports/Complaints**

All reports of fraudulent, abusive or other improper conduct, if not made to the Compliance Officer or through the hotline, will be promptly forwarded to the Compliance Officer for review. The Compliance Officer, in consultation with other ACMH staff and legal counsel as appropriate, will determine whether the report warrants an investigation. The Compliance Officer will use best efforts to make this determination within ten days of the receipt of the report. The Compliance Officer will maintain a log of all compliance-related reports filed through the hotline and other means. The log will specify the nature of the report, the date of the report, the reporting method (hotline, etc.), the name of the person filing the report (if the report was not filed anonymously), whether an investigation was conducted and if so the outcome of the investigation and the corrective or disciplinary action, if any, taken by ACMH. These documents will be kept confidential and will be shared with individuals or advisors only as necessary to comply with this policy or to otherwise carry out ACMH operations.

### **8.6 Non Retaliation/ Non Intimidation ("Whistleblower Policy")**

ACMH is committed to prohibiting intimidation, retaliation, harassment, discrimination or other retaliation for “good faith participation in the Compliance Program”. No individual who files a report under ACMH’s Whistleblower Policy in good faith may be subject to retaliation in any form. “Good faith participation in the Compliance Program” includes, but is not limited to:

- reporting actual or potential issues or concerns, including but not limited to, any action or suspected action taken by or within ACMH that is illegal, fraudulent or in violation of any adopted Agency policy;
- cooperating with or participating in the investigation and resolution of such matters;
- assisting with or participating in self-evaluations, audits, and/or implementation of remedial actions; or
- reporting to appropriate regulatory officials as provided in New York State Labor Law §§ 740 and 741.

Retaliation is also prohibited against an affected individual for refusing to carry out any activity that is the subject of a report made under this policy in good faith. No individual may threaten to retaliate against another individual for filing a report.

Prohibited retaliation includes, but is not limited to, terminating, suspending, demoting, failing to consider for promotion, harassing or reducing the compensation of an employee due to the employee’s intended or actual filing of a report under this policy. Retaliation is prohibited even if it is determined that the allegedly improper conduct was proper or did not occur, provided that the report was made in good faith. ACMH reserves the right to take disciplinary action against any individual who maliciously files a report he or she knows to be untrue.

Any actual or threatened retaliation should be reported by the affected employee or any other individual to the Compliance Officer. The Compliance Officer will investigate such allegations in the same manner as other investigations carried out under this policy.

## **ARTICLE 9**

### **INVESTIGATIONS AND CORRECTIVE ACTION**

To be effective, a compliance program must institute procedures for investigating compliance issues and implementing corrective action. Below are the procedures that ACMH, Inc. has adopted to combat fraud, waste and abuse in the course of its operations.

#### **9.1 Investigation**

Upon receiving a report of possible unethical or illegal conduct, or of a pattern of possible improper billing, the Compliance Officer will review the information and if it is determined that an investigation is warranted, he or she will promptly coordinate the investigation. The Compliance Officer

may obtain the assistance of other ACMH staff and outside legal and financial advisors as necessary to carry out a proper investigation. All Affected Individuals will be required to cooperate in such investigations. The Compliance Officer will monitor the activities of any outside advisors performing investigative services for ACMH. ACMH will make reasonable efforts to protect the identity of any individuals filing non-anonymous reports except when disclosure of the individual's identity is necessary to conduct an effective investigation.

The objective of such an inquiry will be to determine whether, first, a compliance issue exists or there has been a violation of the Code of Conduct or applicable legal rules. The investigation may include, but is not limited to; interviews, documentation reviews, root case analysis, etc. 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 instituted. If ACMH identifies credible evidence or credibly believes that a State or Federal law, rule or regulation has been violated, the required provider must promptly report the violation to the appropriate government entity. The Compliance Officer shall maintain copies of any such report.

For reports that include possible improper billing or related issues, the investigation may also include selecting for review a random sampling of bills, along with the supporting medical documentation. Only bills that are still "in the pipeline" and being processed within the institution will be selected. If the review of these bills warrants, the sample will be expanded to additional bills "in the pipeline" as well as historical billing so that the extent of any problem can be more accurately assessed. During these reviews, any bills that appear to be improper or inadequate will be held and not submitted for payment until all questions regarding them have been resolved. If it is determined at the conclusion of the inquiry that any bills were submitted in error to the government or any other payor, any payments received will be promptly refunded.

The Compliance Officer will provide the Executive Vice President with regular reports of all pending investigations. The Compliance Officer, in consultation with the Executive Vice President, will have the authority to order the temporary suspension of any ACMH activity that is the subject of a pending investigation.

Upon completion of an investigation, the Compliance Officer will prepare a written report which will include, but is not limited to the identification of the investigator, the process of the investigation (e.g. interviews, documentation reviews) and the investigation's findings, which will indicate whether fraudulent, abusive or other improper conduct was committed. If such conduct is found, the Compliance Officer will recommend to the Executive Vice President, if appropriate, any corrective or disciplinary action deemed appropriate. The Compliance Officer will maintain documentation and reports of all audits and investigations.

## **9.2 Corrective Action and Responses to Suspected Violations**



Whenever a compliance problem or billing error is uncovered, regardless of the source, the Compliance Officer will work collaboratively with ACMH staff, volunteers or contracted individuals to ensure that appropriate and effective corrective action is implemented. Such problems might include, for instance, evidence that ACMH is billing for services or procedures that were not performed or ordered, instances of double billing, use of improper codes, or suspect financial relationships with providers who refer patients to ACMH. In discharging this responsibility, the Compliance Officer will work in consultation with the Compliance Committee and counsel, among others, as appropriate.

It is imperative that all affected individuals participate in the resolution of compliance issues. It is the expectation that the compliance problem is corrected promptly and thoroughly. Any corrective action and response implemented must be designed to ensure that the violation or problem does not recur (or reduce the likelihood that it will recur) and be based on an analysis of the root cause of the problem. In addition, the corrective action plan should include, whenever applicable, a review of the effectiveness of the corrective action following its implementation. If such a review establishes that the corrective action plan has not been effective, then additional or new corrective actions must be implemented before closing out the concern. Included in the corrective action, the Agency will voluntarily disclose to an appropriate governmental agency and refund any past payments that resulted from any improper bills, if appropriate.

If it appears that a larger, systemic problem may exist, then possible modification or improvement of ACMH's compliance or billing practices will be considered. Such action might include, for instance, creating new procedures, or modifying existing procedures, so as to ensure that similar errors will not recur in the future. Possible changes or additions to procedures will be reviewed with the Compliance Committee and the Board of Directors.

### **9.3 Sanctions**

Affected Individuals will be subject to sanctions and discipline for (i) engaging in, encouraging, directing, facilitating or permitting either actively or passively fraud, abuse or other non-compliant behavior (ii) failing to report suspected fraud or abuse committed by others or (iii) violating ACMH's Code of Conduct or any other ACMH policy designed to detect or prevent fraud and abuse. The Compliance Officer shall be responsible for recommending any remedial or disciplinary action against Affected Individuals to correct violations of the Regulatory Compliance Plan. Sanctions will be enforced fairly and consistently, and the same disciplinary action applies to all levels of personnel, based upon the gravity of non-compliance.

9.3.1 Employee Sanctions. Employee sanctions can range from written admonition to, in the most extreme cases, discharge. It is ACMH's policy to respect employees' rights to due process under applicable federal and state laws and regulations.

9.3.2 Directors and Officers Sanctions. The directors and officers of ACMH shall be subject to sanctions ranging from written admonition to, in the most extreme cases, removal in accordance

with any applicable laws and regulations. ACMH will observe the due process requirements outlined in its By-laws, Audit Committee Charter and applicable contracts and agreements.

9.3.3 Volunteers/Independent Contractors Sanctions. Sanctions sought against volunteers/independent contractors include written admonition, financial penalties, and in the most extreme case, termination of the relationship/contract for failure to adhere to the required ACMH compliance program requirements. ACMH will observe any contractual requirements governing its relationship with the contractor and applicable laws and regulations.

9.3.4 Recordkeeping. Any discipline resulting from violation of the compliance plan will be appropriately documented in the employee's personnel file, along with a written statement of the reason(s) for imposing such discipline. The Director of Human Resources shall provide a record of all actions to the Compliance Officer. The Compliance Officer shall maintain a record of all disciplinary actions involving the Compliance Plan and report at least annually to the Board of Directors regarding such actions. Disciplinary records shall be maintained for no fewer than seven (7) years.

#### 9.4 **Discipline**

ACMH's disciplinary policies include a progressive discipline program for those employees who commit violations of ACMH policies, or whose work performance falls below acceptable standards. The progressive disciplinary process is designed to assist employees in correcting performance problems and to deter any repeated violations of policies. The process generally begins with the least severe action necessary to discipline the Employee and correct the behavior that caused the violation of ACMH policies. Such disciplinary action can range from an initial verbal warning to termination of employment. In those circumstances where a violation of ACMH policies and/or the Regulatory Compliance Plan is so egregious that it rises to the level of gross misconduct, ACMH may, at its sole discretion, advance the progressive disciplinary process to a determination of immediate termination of employment. Disciplinary policies will be fairly and firmly enforced, with intentional or reckless behavior being subject to more significant sanctions.

There are certain circumstances which may help to mitigate the severity of the disciplinary action recommended by the Compliance Officer against the employee, including, but not limited to (a) the prompt reporting by the Employee of any violation(s) of the Regulatory Compliance Plan, (b) a positive work record including no previous history of violations under the Regulatory Compliance Plan, (c) whether the violation was committed intentionally, recklessly, negligently, or accidentally, (d) whether the individual encouraged, directed, facilitated or permitted non-compliant behavior cooperating fully with the investigation and correction of the violation, and/or (e) other compelling factors reviewed with the Compliance Officer and Executive Vice President.

## **ARTICLE 10**

### **Reporting Results of Regulatory Compliance Investigations and Audits**

Any overpayments or fraudulent or abuse activity discovered through a regulatory compliance audit or investigation will be reviewed by the Compliance Officer and Executive Vice President in consultation with legal counsel , if appropriate, to determine whether and in what manner it is appropriate to report any detected fraud or abuse or improper activity to federal, state, or local government agencies. ACMH shall report, return, and explain overpayments as required in 18 NYCRR SubPart 521-3. Such reporting may involve, depending on the circumstances, refunding overpayments to the Office of the Medicaid Inspector General (OMIG) or other government payers, making a self-disclosure in accordance with formal or informal protocols established by the appropriate government agency or alerting law enforcement authorities.

## **ARTICLE 11**

### **Applicable Laws**

#### **The Federal and State False Claims Acts**

##### ***Scope of the FCA***

The federal False Claims Act (the “FCA”) is a federal law (31 U.S.C. § 3729-3733) that is intended to prevent fraud in federally funded programs such as Medicare and Medicaid. The FCA makes it illegal to knowingly present, or cause to be presented, a false or fraudulent claim for payment to the federal government. Under the FCA, the term “knowingly” means acting not only with actual knowledge but also with deliberate ignorance or reckless disregard of the truth.

##### ***FCA Penalties***

The federal government may impose harsh penalties under the FCA. These penalties include “treble damages” (damages equal to three times the amount of the false claims) and civil penalties from \$13,507 to \$27,018 –per claim. Individuals or organizations violating the FCA may also be excluded from participating in federal programs. Under the State False Claims Act, civil penalties range from \$6,000 to \$12,000 per claim plus treble damages.

##### ***Examples of Potential FCA Violations***

Examples of the type of conduct that may violate the FCA include the following:

- Knowingly submitting claims to the Medicaid program for services not actually rendered or for which ACMH is otherwise not entitled to reimbursement;

- Knowingly submitting inaccurate, misleading or incomplete Medicaid cost reports; and
- Knowingly failing to seek payment from other insurers or government programs that provide coverage to a client before billing Medicaid.

### ***The FCA's Qui Tam Provisions***

The FCA contains a *qui tam*, or whistleblower, provision that permits individuals with knowledge of false claims activity to file a lawsuit on behalf of the federal government. These individuals are referred to as “relators.” The relator’s lawsuit is filed under seal, which means it is kept confidential until the U.S. Justice Department reviews the case and decides whether to take over prosecution of the matter. An individual is considered a relator only if he or she is the “original source” of the report to the federal government. An individual is not the original source if the report involves activities that are already the subject of a government investigation or have previously been disclosed by the provider to the government. If a relator’s lawsuit is successful, the relator may receive a share of the award, plus reasonable expenses and attorneys’ fees. While all Affected Individuals are encouraged to seek to resolve concerns through ACMH’s internal compliance mechanisms, no employee will be impeded from filing a qui tam case.

### ***The FCA's Prohibition on Retaliation***

The FCA (31 U.S.C§ 3730(h) ) prohibits retaliation against Affected Individuals for filing a *qui tam* lawsuit or otherwise assisting in the prosecution of an FCA claim. Under the FCA, Affected Individuals who are the subject of such retaliation may be awarded reinstatement, back pay and other compensation. ACMH’s Whistleblower Policy strictly prohibits any form of retaliation against Affected Individuals for filing or assisting in the prosecution of an FCA case

### **Federal Program Fraud Civil Remedies Act of 1986**

The Federal Program Fraud Civil Remedies Act of 1986 (31 U.S.C. § 3801-3812) authorizes the federal government to impose administrative penalties against any person who files a false claim with certain government agencies, including the U.S. Department of Health and Human Services. The definition of a false claim under this law is similar to the definition under the FCA. The maximum penalties under the law are adjusted annually.

### **Article 13- New York State False Claims Act § 187-194**

The New York State False Claims Act (Article 13, State Finance Law §187-194) covers claims submitted to state or local government agencies. 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 also allows a private person to file a lawsuit in state court, in the place of state or local authorities. If the person who filed the lawsuit wins, he or she can receive a percentage of the money awarded the court.

The NYS FCA (Article 13, State Finance Law § 191) is similar to the Federal FCA prohibiting retaliation against Affected Individuals for filing a *qui tam* lawsuit or otherwise assisting in the prosecution of an FCA claim. Under the NYS FCA, Affected Individuals who are the subject of such retaliation may be awarded reinstatement, back pay and other compensation. ACMH's Whistleblower Policy strictly prohibits any form of retaliation against Affected Individuals for filing or assisting in the prosecution of an FCA case

### **State Laws Punishing False Claims and Statements**

In addition to the State FCA, there are a number of other New York State laws punishing the submission of false claims and the making of false statements:

- 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.
- Section 145-b of the Social Services Law makes it unlawful for any person to knowingly seek payment of public funds for services furnished under a social services program by making a false statement or deliberately concealing a material fact. Violations of this law may be punished through civil damages.
- Social Services Laws 145-c 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, the person's family's needs are not taken into account for six months if a first offense, 12 months if a second (once if benefits received are \$1,000 - \$3,900), 18 months if a third (or once if benefits received are over \$3,900) and five years for four or more offenses.
- 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.
- Section 366-b of the Social Services Law makes it a misdemeanor for any person, with intent to defraud, to present a false or fraudulent claim for Medicaid reimbursement.
- Article 175 of the Penal Law makes it a misdemeanor to make or cause to make a false entry in a business record, improperly alter a business record, omit making a true entry in a

business record when obligated to do so, prevent another person from making a true entry in a business record or cause another person to omit making a true entry in a business record. If the activity involves the commission of another crime it is punishable as a felony.

- Article 175 of the Penal Law also makes it a misdemeanor to knowingly file a false instrument with a government agency. If the instrument is filed with the intent to defraud the government, the activity is punishable as a felony.
- Article 176 of the Penal Law makes it a misdemeanor to commit a “fraudulent insurance act,” which is defined, among other things, as knowingly and with the intent to defraud, presenting or causing to be presented a false or misleading claim for payment to a public or private health plan. If the amount improperly received exceeds \$1,000, the crime is punishable as a felony.
- Article 177 of the Penal Law makes it a misdemeanor to engage in “health care fraud,” which is defined as knowingly and willfully providing false information to a public or private health plan for the purpose of requesting payment to which the person is not entitled. If the amount improperly received from a single health plan in any one-year period exceeds \$3,000, the crime is punishable as a felony.
- Section 403 of the Insurance Law authorizes the Insurance Department to impose civil penalties for any action that constitutes a fraudulent insurance act under Article 176 of the Penal Law.
- Sections 740 and 741 of the Labor Law prohibit an employer from taking any retaliatory action against an employee because the employee (i) discloses or threatens to disclose to a supervisor or government agency any illegal policy or practice of the employer that threatens public health or safety, or constitutes health care fraud, (ii) provides information to or testifies before any government agency conducting an investigation into such a policy or practice, or (iii) objects to or refuses to participate in any such policy or practice. However, retaliatory action is prohibited only if the employee, prior to providing information to a government agency, notifies his or her supervisor of the illegal policy or practice and affords the employer a reasonable opportunity to correct the problem. An employee subject to illegal retaliation may file a civil action against the employer and is entitled to reinstatement, lost wages and attorneys’ fees.