

Brighton Cornerstone

COMPLIANCE PROGRAM MANUAL

CODE OF CONDUCT AND COMPLIANCE GUIDELINES

OUR MISSION AND VALUES

Brighton Cornerstone is committed not only to providing residents with high quality and caring medical services, but also providing those services pursuant to the highest ethical, business, and legal standards. These high standards must apply to our interactions with everyone with whom we deal. This includes our residents, other health care providers, companies with whom we do business, government entities to whom we report, and the public and private entities from whom reimbursement for services is sought and received. In this regard, all personnel must not only act in compliance with all applicable legal rules and regulations, but also strive to avoid even the appearance of impropriety. In short, we do not and will not tolerate any form of unlawful or unethical behavior by anyone associated with Brighton Cornerstone. We expect and require all personnel to be law-abiding, honest, trustworthy, and fair in all of their business dealings. To ensure that these expectations are met, the Compliance Program has become an integral part of our corporate mission and business operations. The attached Compliance Program's Code of Conduct provides guidance to ensure that all of our work is done in ethical and legal manner. Please review it thoroughly. Your adherence to its spirit, as well as its specific provisions, is absolutely critical to our future. In your daily work, if you encounter a situation or proposed course of conduct, and you are unsure whether it is allowed by the Code of Conduct, raise the issue with your supervisor, with a member of the Compliance Department at the numbers listed in the last section of the Code of Conduct, or to our Corporate Office. It is a basic principle of our Compliance Program that there will be no retribution for asking questions, raising concerns about the Code, or reporting possibly improper conduct.

I. INTRODUCTION

1. Compliance Manual. The Corporate Compliance manual sets forth standards of conduct that personnel employed by or associated with Brighton Cornerstone are expected to follow.

In creating this Manual, our goal is to ensure compliance with the laws, rules and regulations that govern our daily operations, including, among other things, those relating to:

- (i) the quality of medical services we provide;
- (ii) our coding, billing and documentation of the services;
- (iii) our general business practices; and
- (iv) Our referral relationships.

Brighton Cornerstone also wants to ensure that we are operating pursuant to the highest ethical, legal and moral standards.

II. CODE OF CONDUCT

Our facility has adopted the following Code of Conduct as a central part of our Compliance Program. Compliance with Brighton Cornerstone's Code of Conduct is a condition of employment, and violation of these standards will result in discipline being imposed, up to and including possible termination.

1. **Honesty and Lawful Conduct.** Personnel and Brighton Cornerstone affiliated physicians must be honest and lawful in all business and personal matters by avoiding all illegal conduct. No person should take any action that he or she believes violates any statute, rule, or regulation. In addition, personnel must comply with the Code and departmental compliance policies and procedures, strive to avoid the appearance of impropriety, and never act in a dishonest or misleading manner. All facility personnel and affiliated physicians,

consultants, and vendors must comply with the Code of Conduct, and report any action they think may be unlawful.

2. **Cooperation with the Compliance Program.** Because of the importance of the Compliance Program, we require that each of you cooperate fully with this effort. The Compliance Program will work effectively only if everyone works together to ensure its success, understands what is required under the law and our own Code of Conduct, and works to ensure that those standards are being followed. In particular, personnel and physicians must cooperate with all compliance-related inquiries and actively work to correct any unethical, illegal, or improper practices that are identified.

3. **Standards Relating to Quality of Care and Services**

Brighton Cornerstone is fully committed to providing the highest quality of resident care in accordance with all applicable laws, rules and regulations. As part of this commitment, we will ensure that necessary quality assurance systems are in place and functioning effectively.

- a. **Quality of Care Principles.** In keeping with our mission and values the following quality of care and services principals have been incorporated into our Compliance Program:
 - All residents will receive treatment without discrimination as to race, color, religion, sex, national origin, disability, sexual orientation, source of payment, or age.
 - All residents will receive information that is necessary to give informed consent for any proposed procedure or treatment. This information shall include the possible risks and benefits of the procedure or treatment.
 - All residents will receive considerate and respectful care in a clean and safe environment free of unnecessary restraints.
 - We will protect and promote the rights of each resident, including, but not limited to, the resident's right to respect, privacy, a dignified existence, self-determination, and the right to participate in all decisions about their own care, treatment and discharge.
 - We will conduct background checks pursuant to federal and state law (which includes, but is not limited to, criminal convictions and /or exclusion from participation in any federal health care program) on all personnel involved in resident care, or who have access to residents' possessions.
 - All individuals employed by this facility will have the proper credentials, experience and expertise required to discharge their responsibilities.
 - We will strive toward a culture of resident safety and providing quality medical care to its residents.
- b. **Credentialing.** We will comply with all applicable federal and state laws, rule and regulations governing the credentialing process. This is a key element to ensuring that our facility provides the highest quality care and services to its residents. Brighton Cornerstone has processes in place for the on-going and continuous credentialing and competency reviews of clinical and non-clinical staff. Complying with

credentialing and licensure requirements is a necessary component of our commitment to providing appropriate quality of care to our residents.

- c. **Mandatory Reporting.** As part of our commitment to providing the highest quality of resident care and services, Brighton Cornerstone complies with all applicable federal and state mandatory reporting laws, rule and regulations. To this end, we will ensure that all incidents and events that are required to be reported are done so in timely manner, and will monitor compliance with such requirements.
4. **Compliance with Federal and State Laws Regarding and Submission of Claims.** It is the policy of this facility that all personnel (including employed physicians and management), and contractors and agents shall comply with all applicable Federal and State laws and regulations governing the submission of billing claims and related statements. A detailed description of :
 - (i) the Federal False Claims Act;
 - (ii) the Federal Program Fraud Civil Remedies Act;
 - (iii) The whistleblower protections afforded under such laws.
5. **Billing, Coding and Documentation for Services.** All federal and state regulations governing billing, coding and documentation will be fully followed for all physicians, or other medical services billed by this facility. Thus, all billing and coding for services must be accurate and truthful, and no personnel should ever misrepresent charges or services to, or on behalf of, a patient or third-party payor. Deliberate or reckless misstatements to government agencies or other payors will expose the personnel involved to termination and criminal penalties.

Only those medical services that are consistent with accepted standards of medical care may be billed. In this regard, billing and coding must always be based on adequate documentation of the medical justification for the service provided and for the bill submitted, and this medical documentation must comply with all regulations. Only those codes that correspond to the service rendered and documented should be selected.

Finally, if this facility learns or knows that it has received payments for which it was not entitled from a governmental or private payor, the payments will be refunded to the appropriate payor as soon as possible.

6. **Business Practices.** Brighton Cornerstone will forego any business transaction or opportunity that can only be obtained by improper and illegal means, and will not make any unethical or illegal payments to anyone to induce the use of our services.
 - a. **Business Transactions.** Business transactions and joint ventures with other health care providers will be aimed at enhancing the quality or continuity of care provided to patients. Financial investments in such transactions and ventures, and any return on investments, will be based on the bona fide financial value of the investment and its positive impact on our facility's ability to deliver medical services. Such investments will not be based on intent to induce or reward referrals to or from another provider.

- b. **Business Records.** Management must ensure that all business records are accurate and truthful, with no material omissions; that the assets and liabilities of this facility are accounted for properly in compliance with all tax and financial reporting requirements, and that no false records are made. Similarly, all reports submitted to governmental agencies, insurance carriers, or other entities will be accurately and honestly made.
 - c. **Cost Report.** The facility's Cost Report will be prepared in compliance with all applicable state and federal regulations. Costs will be claimed when based on appropriate and accurate documentation; unallowable costs will not be claimed for reimbursement; and all costs will be properly allocated to the appropriate cost centers based on verifiable information and date.
 - d. **Credit Balances.** On a periodic, regular basis, our billing department will generate reports of the status of any credit balances of refunds owing to Medicare and other third-party payors. Such refunds will then be made to the appropriate payor in a timely and reasonable manner.
7. **Purchasing and Competitive Bidding Policy.** All purchasing decisions must be made with the purpose of obtaining the highest quality product or service for Brighton Cornerstone or its patient's at the most reasonable price. No purchasing decision may be made based on any consideration that any employee, officer or trustee – or any family member or friend of any of them- will benefit by the transaction. Rather, the sole criteria behind all purchasing decisions must be only the best interests of this facility. No service or item is purchased in return for a referral of patients from another or with a view towards inducing another to refer patients. In purchasing item or contracting for services, our competitive bidding and pricing rules must be followed.
8. **Payments and Gifts.** No personnel will engage, either directly or indirectly, in any corrupt business practice, including bribery, kickbacks or payoffs, intended to influence or reward favorable decisions of any patient, physician, government representative, contractor, vendor, or any other person in a position to benefit this facility or the employee in any way.
9. **Compliance with Federal and State Anti-Referral Laws.** Federal and state law makes it unlawful to pay any individual on the basis of the value or volume of referrals of residents. This includes the giving of any form of remuneration, including virtually anything of value, in return for a referral. In compliance with the federal and state anti-referral laws, Brighton Cornerstone does not pay incentives to any personnel based upon the number of persons admitted for treatment or the value of services provided nor do we pay physicians or anyone else, either directly or indirectly, for client referrals. The decision to refer residents is a separate and independent clinical decision made by the referring physician or health care provider.

Brighton Cornerstone does not accept any form of remuneration in return for referring our residents to other health care providers. Rather, in discharging residents and referring them to other providers, it is our policy:

- (i) that such referrals will be based on the resident's documented medical need for the referred service and the ability of the referred provider to meet that need; and
- (ii) That the resident's freedom to choose the provider is at all times respected and honored.

All contracts, leases, and other financial relationships with other healthcare medical providers who have a referral relationship with Brighton Cornerstone will be based on the fair market value of the services or items being provided or exchanged, and not on the basis of the volume or value of referrals of Medicare or Medicaid business between the parties.

10. **Confidentiality of Resident Information.** In compliance with federal and state privacy laws, all personnel will keep patient information confidential except when disclosure is authorized by the patient or permitted by law.

11. **Duty of Loyalty.** All personnel owe a duty of loyalty, honesty and fidelity to Brighton Cornerstone. This duty particularly requires compliance with the following facility policies:

a. **Conflicts of Interest.** All personnel are to disclose to the Compliance Liaison any conflicts of interest in outside companies, entities or concerns. Conflicting interests can include both financial interests and non-financial relationships with entities that compete or do business with Brighton Cornerstone, and include any interests that otherwise could create an appearance that the personnel's conduct on behalf of this facility might be compromised in some way by the competing interest. Conflicts must be reported even if the conflict arises because only an immediate family member has the interest in the other entity.

b. **Gifts and Hospitality.** Personnel may not accept gifts and hospitality from residents, resident's family members, vendors or contractors doing business with this facility if doing so would create an appearance that the gift or hospitality is being provided to induce the personnel to act in his or her own benefit (over the Facility's). Cash may not be accepted under any circumstance. Personnel may accept business entertainment consistent with what is reasonable under the circumstances, as long as the offered entertainment is not for the purpose of improperly influencing the personnel's business behavior.

If you have any question or concern whether the acceptance of an offer of a gift or hospitality may be improper, you should immediately raise your concern with the Compliance Office.

12. **Responsibilities.** All personnel, including employees, officers, and supervisors have the following responsibilities under the Compliance Program:

- Employees must know and follow the federal and state laws, rules and regulations that apply to their jobs; comply with the standards set forth in Brighton Cornerstone's Code of Conduct and any applicable department compliance protocols; and recognize that any violation of these standards of conduct will result in disciplinary action.
- Department Heads, Supervisor's and Managers must create and maintain a work environment in which ethical concerns can be raised and openly discussed. They also must ensure that staff understands the importance of the Compliance Program and the Code of Conduct, and that staff are aware of the reporting procedures for suspected unlawful activity.
- Contractors and Other Providers. All persons and entities with which Brighton Cornerstone contracts with will receive a copy of our Compliance Manual and will be asked to cooperate with our Compliance Program. This includes individual physicians, physician groups, vendors, contractors, and other healthcare providers. These other parties will also be encouraged to adopt their own Compliance Programs where appropriate.

Other Policies and Procedures. In addition to the Code of Conduct and Compliance Procedures set forth in this Manual, Brighton Cornerstone has topic-or department-specific compliance policies and procedures. These additional policies and procedures are an integral part of the Compliance Program and are designed to complement the procedures and standards set forth in this Manual.

III. COMPLIANCE PROCEDURES-Violations, Anonymity, and Non-Retaliation

1. **Compliance Personnel and Procedures.** The following compliance personnel and procedures are available to all employees.

Personnel:

All personnel are required as a condition of employment to report suspected misconduct.

- a. **Compliance Liaison** – The Compliance Liaison is responsible for receiving and responding to all Reports, Complaints, and questions about compliance issues. He/she is also responsible for tracking new developments, ensuring appropriate compliance reviews are performed, and conducting compliance training. The Compliance Liaison reports directly to the Board of Directors or Owner, or their designee. The Compliance Liaison will present quarterly debriefs in conjunction with an annual report to a subcommittee of the Board of Directors or Owner or their designee on the Compliance Program that includes:
 - i. the Compliance Program’s goals, objectives and work plan;
 - ii. an assessment of risk areas and how resources should be allocated to address such risks; and
 - iii. A review of how goals and objectives were or were not met for the prior year.
- b. **Compliance Committee.** A Committee comprised of the Compliance Liaison and members of management meet at least on an annual basis to review the implementation and progress of the Compliance Program. As necessary, the Committee will meet more frequently to address any specific Compliance-related concerns or issues that may arise. Committee representatives may include but are not limited to; Director of Nursing, MDS Coordinator, Human Resources, Accounts Payable, and Accounts Receivable/Billing.

Investigations:

All reported violations of the code, compliance standards and policies, and federal and/or state laws and regulations will be promptly reviewed and investigated, as appropriate, by the Compliance Liaison or an appropriate designee, and will be treated confidentially to the extent possible and consistent with the facility’s legal obligations.

Investigations by Brighton Cornerstone of wrongdoing involving compliance issues will be directed and coordinated by the Compliance Liaison or in some cases by our legal counsel, as appropriate.

Personnel are expected to cooperate in such investigations. If the result of the investigation indicates that corrective action is required, Brighton Cornerstone will decide what steps it should take to rectify the problem and avoid the likelihood of its recurrence.

No Retaliation Policy. Retaliation in any form against an individual who in good faith reports possible unethical or illegal conduct is strictly prohibited and is itself a serious violation of the Code of Conduct.

- a. **Reporting and Complaint.** All personnel can and should raise any questions about potentially unethical or illegal conduct. Reports of suspected misconduct may be made to any one or more of the following people:
- A manager or supervisor;
 - Another member of senior management;
 - Human Resources Officer or designee;
 - The Compliance Liaison; or Compliance Helpline.

Anyone who receives such a compliance report must advise the Compliance Liaison as soon as possible. The Compliance Liaison may be reached by one of the methods listed in Section 5 “Questions & Concerns” and Section 6 “Compliance Contacts, and Numbers”: Page 12 & 13 of this manual.

- b. **Confidentiality and Compliance Reporting.** Reports or questions may be raised anonymously, if chosen, and will be held in the strictest confidence possible, consistent with the need to investigate any allegations of wrongdoing. Personnel who do not wish to contact the Compliance Liaison directly, may instead raise an issue or report a compliance concern through the use of one of the methods listed in Section 6 “Compliance Contacts & Numbers”; Page 12 of the manual.

In all instances when requested, we will strive to maintain the anonymity of any reporting personnel. It must be understood, however, that there may come a point in time where a reporting individual’s identity may become known or may have to be revealed (e.g., if government authorities become involved in the investigation).

Finally, whether or not the identity of any reporting personnel becomes known or is revealed, under no circumstances will Brighton Cornerstone take adverse action against personnel who report actual or potential misconduct in good faith and who were not involved in the misconduct in question. Simply put, there shall be no retaliation for good faith reporting of actual or possible violations of the Code, Compliance Program policies or federal and/state laws and regulations.

Personnel who intentionally file false reports, however, will be subject to appropriate disciplinary action.

- c. **Inquiry by the Compliance Liaison.** Upon receiving a report of possible unethical or illegal conduct, the Compliance Liaison will conduct an inquiry, as appropriate, in consultation with the appropriate personnel necessary to investigate the complaint.
1. Report received by CL.
 2. CL assembles all pertinent facts/evidence/data through interviews, gathering statements review of records.

3. Upon conclusion of the fact/data collection, CL in conjunction with the Compliance Committee (CC) examines the evidence collected.
4. CL and CC determine finding.
5. Take immediate corrective measures, if requested. Make appropriate adjustments to policies and procedures as needed to prevent future reoccurrence of the same or similar offences.
6. Submit findings to the Board of Directors, Owner, Administrator or their designee.

2. Remedial Action and Disciplinary Action.

1. **Corrective Action.** Violations of the Code of Conduct may warrant corrective action, including, but not limited to :
 - refunding overpayments;
 - additional training for personnel;
 - personnel being disciplined, including discharged;
 - suspension of billing for a particular provider or a particular of service
 - modification or improvement of the facility business practices; ;and
 - Modification or improvement of the Compliance program itself to better ensure continuing compliance with applicable federal and state laws and regulations.
2. **Discipline.** All personnel are expected to adhere to this Code of Conduct and compliance standards and will be subject to disciplinary action. If the Compliance Liaison concludes, after an appropriate investigation, that these standards have been violated, appropriate disciplinary action may be imposed, ranging from verbal warnings to termination of employment, regardless of their level or position, if they fail to comply with any applicable laws or regulations, the facility Code of Conduct, Standards or the Compliance Program standards or policies. Disciplinary action shall be taken fairly and firmly enforced as appropriate for :
 - Authorization or participation in actions that violate federal and/or state laws and regulations, the Code of Conduct, Standards, or the compliance standards and policies;
 - Failure to report a violation, or suspected violation, of federal and/state laws and regulations, the Code of Conduct, Standards, or the compliance standards and policies;
 - Encouraging, directing, facilitating or permitting either actively or passively non-compliant behavior;
 - Failure by a violator's supervisor(s) to detect and report a compliance violation, if such failure reflects inadequate supervision or lack of oversight;
 - Refusal to cooperate in the investigation of a potential violation;
 - Retaliation against an individual for reporting a compliance violation.
 - Personnel who intentionally file false reports, however, will be subject to appropriate disciplinary action.

The severity of the disciplinary action, will be determined by Compliance Liaison and the individual's supervisor, and will depend on a variety of factors, including, but not limited to;

- (1) The severity of the violation,

- (2) Whether the violation was committed intentionally, recklessly, negligently or accidentally.
- (3) Whether the individual has committed any other violations in the past,
- (4) Whether the individual self-reported his or her misconduct, and
- (5) Whether (and the extent to which) the individual cooperated with the facility in connection with its investigation of the misconduct.

In addition to taking disciplinary action, other remedial measures, as appropriate, in the event of a violation of any applicable laws or regulations, our Code of Conduct, or the compliance standards and policies.

3. **Compliance Assurance Monitoring.** The Compliance Liaison will be responsible for continued monitoring of compliance with this Manual and all applicable federal and state rules, laws, and regulations.
 - a. **Tracking New Developments.** On a continuing basis, the Compliance Liaison will keep abreast of, and review, all new regulatory or legal requirements issued by the federal or state government, including, but not limited to
 - the monthly Medicare Information Resource;
 - Department of Medicaid Updates;
 - all new rules governing the documentation, coding and billing of service;
 - annual updates to the Current Procedural Terminology (CPT); and
 - New Fraud Alerts issued by the Office of Inspector General

<https://oig.hhs.gov/fraud/medicaid-fraud-control-units-mfcu/index.asp>

<https://signup.healthcare.gov/?x=165&y=22>

<http://www.ssa.gov/onlineservices/>

<http://www.ama-assn.org/ama/home.page>

<https://public.govdelivery.com/accounts/KYCHFS/subscriber/new>

Based on any relevant new developments, the Compliance Liaison will review existing policies and procedures to ensure that Brighton Cornerstone is in compliance with federal and state requirements.

- b. **Ongoing Compliance Reviews.** On a regular basis, the Compliance Liaison will cause audits to be conducted, which may include, but will not be limited to , ensuring that:
 - the documentation and coding for both in-patient and out-patient services (if applicable) being billed are accurate and complete, or other services that may apply;
 - computer systems do not automatically insert information that is not supported by the documentation;
 - if patterns of claims denials exist, they are detected, evaluated to determine the cause and appropriately corrected;

- third-party audits are reviewed to determine if those results reflect any systemic deficiency or problem in compliance with state or federal rules, regulations or laws
 - credit balances are tracked and refunded to appropriate payors;
 - personnel conform to appropriate policies concerning marketing and the giving or receiving of gifts and business entertainment;
 - The Facility competitive bidding policies are appropriately followed;
 - The facility business practices are in compliance with applicable laws, rules and regulations. Such audits might include a review of the facility's credit balance, its practice of waiving co-payments or providing professional courtesy, and the fair market value of leases, equipment rental agreements, or personal service contracts with other providers.
- c. **Exclusion Reviews.** On an annual basis, the Compliance Liaison or a designee will review the OIG's exclusion databases to ensure that Brighton Cornerstone does not employ or contract with anyone who has been excluded from participating in federal healthcare programs. These databases will also be reviewed upon hiring of new personnel/contracting with new individuals or entities.
- d. **Periodic reviews.** Undertake periodic reviews of the compliance program to identify necessary changes.
4. **Training.** The Compliance Liaison will ensure that all personnel receive compliance and ethics training.
- a. **Compliance Manual.** The Compliance Liaison is responsible for ensuring that this Compliance manual is distributed to all personnel and for maintaining a file containing each person's signed acknowledgment form. All newly hired personnel will receive a copy of this Manual during the initial orientation process and sign an acknowledgment form to be placed in the employee file.
 - b. **Annual Training.** The Compliance Liaison is responsible for ensuring that an annual review occurs for all staff regarding this Compliance Manual and the requirements of the Compliance Program. In addition, the Compliance Liaison will conduct training on compliance issues, as necessary, for new and existing personnel. The Compliance Liaison, or their designee will maintain a record of all personnel who attended such training.
 - c. **Remedial Training.** Finally, the Compliance Liaison will be responsible for any remedial training that is required as part of the Compliance Program.
5. **Questions and Concerns.** Neither this manual nor the Compliance Program can cover every situation which may occur. As a result, when unsure of the proper course of conduct in a specific situation, or if there is a question about the possible violation of any of standards of conduct or procedures (whether set forth in this manual or elsewhere) may have occurred, then all employees are urged to contact the Compliance Liaison.

All employees may contact the Compliance Liaison at any time, either in person or in writing, with any compliance-related question or concerns. Questions or concerns may be raised anonymously, if desired. All reports to the Compliance Liaison will be held in the strictest confidence possible, consistent with the need to investigate the matter.

6. **Compliance Contacts and Numbers.** Individuals may contact the Compliance Office with any compliance question or issue. The people and telephone numbers to call are:

- **The Compliance Liaison;** Facility administrator; Cindy Cox
- **In Writing;** Compliance Liaison
55 E. North St.
Madisonville, KY 42431
- **Email;** ccox@brightoncornerstone.com
- **Alternate Email:** compliance@lhsliving.org
- **Phone:** 270-821-1492

APPENDIX A

FEDERAL STATUTES RELATING TO FILING FALSE CLAIMS

I. FEDERAL LAWS

The Federal False Claims Act (31 U.S.C. §§ 3729-3733)

The False Claims Act (“FCA”) provides, in pertinent part that:

- (a) (1) 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 [the above violations]; 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... plus 3 times the amount for damages which the Government sustains because of the act of that person.
- (b) 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; and (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) 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
- (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.

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.

In sum, the FCA imposes liability on any person who submits a claim to the Federal government or a contractor of the Federal government that he/she knows (or should know) is false. An example may be a physician who submits a bill to Medicare for medical services he/she knows he/she has not provided. The FCA also imposes liability on an individual who may knowingly submit a false record in order to obtain payment from the government.

An example of this may include a government contractor who submits records that he/she knows (or should know) are false and that indicate compliance with certain contractual or regulatory requirements. The third area of liability includes those instances in which someone obtains money from the Federal government to which he/she may not be entitled, and then uses false statements or records in order to retain the money. An example of this so-called "reverse false claim" includes a healthcare facility that obtains interim payments from Medicare throughout the year, and then knowingly files a false cost report at the end of the year in order to avoid making a refund to the Medicare program.

In addition to its substantive provisions, the FCA provides parties may bring an action on behalf of the United States. These private parties, known as "*qui tam* relator," may share a percentage of the proceeds from an FCA action or settlement.

Section 3730(d)(1) of the FCA provides, with some exceptions, that a *qui tam* relator, when the government has intervened in the lawsuit, shall receive at least 15 percent but not more than 25 percent of the proceeds of the FCA action depending upon the extent to which the relator substantially contributed to the prosecution of the action.

When the government does not intervene, Section 3730(d) (2) provides that the relator shall receive an amount that the court decides is reasonable, but that shall be not less than 25 percent and not more than 30 percent of the proceeds of the FCA action. In any false claims action, the Government or the *qui tam* relator must prove the allegations by a preponderance of the evidence and may not bring an action more than 10 years after the date on which the alleged violation occurred.

The Program Fraud Civil Remedies Act (31 U.S.C. §§ 3801-3812)

This statute allows for administrative recoveries by Federal agencies. If a person submits a claim that the person knows is false or contains false information, or omits material information, then the agency receiving the claim may impose a penalty of up to \$5,000 for each claim. The agency may also recover twice the amount of the claim if the agency has made payment.

Unlike the FCA, a violation of this law occurs when a false claim is submitted, not 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.

II. WHISLEBLOWER PROTECTION

Federal False Claims Act (31 U.S.C. § 373(h))

The FCA provides protection to any employee, contractor or agent who is 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 lawful acts in furtherance of other efforts to stop Violations of the FCA. Remedies include reinstatement with comparable seniority as the employee, contractor or agent 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.

Appendix B

ANTI-REFERRAL LAWS AND RELATIONSHIPS WITH OTHER HEALTH CARE PROVIDERS

1. Overview of the Anti-Referral Laws

A. Anti-Kickback Statutes

Federal and state laws make it unlawful to pay any individual on the basis of the value or volume of referral of residents. The federal and state **Anti-Kickback Statutes** prohibit giving or receiving any remuneration (which includes, without limitation, money, goods, and services) in exchange for a referral or as an inducement to provide health care services paid for by Medicare or Medicaid. The federal law contains certain statutory exceptions.

Regulations describing additional exceptions for certain business arrangements and payment practices -known as "safe harbors" – also exist. Each exception/safe harbor has a number of specific requirements. Compliance with each requirement of all applicable safe harbors/statutory exceptions removes the risk of criminal, civil or administrative action pursuant to the Anti-Kickback Statute. failure to fall squarely within a safe harbor or exception, however, does not necessarily render an arrangement illegal per se or otherwise actionable. Instead, in such cases, the arrangement will be analyzed in light of the governing law and regulations and, in particular, the intent of the parties.

B. Physician Self-Referral Laws

The physician self-referral laws (the "Stark" laws) forbid referrals between physicians and health care entities that have certain prohibited financial relationships. Under the Stark laws, a physician cannot refer residents to entities furnishing "designated health services" ("DHS") which are payable under Medicare or Medicaid if the physician or his or her immediate family members have a financial Interest in that entity. A prohibited financial relationship includes an ownership or investment Interest and any compensation arrangement. Like the **Anti-Kickback** exceptions/safe harbors, the "Stark" exceptions are often very complex and very detailed. If the **Stark law** is implicated, all relevant exceptions must be squarely met, or the law will have been violated (i.e., Stark, unlike the Anti-Kickback Statute is a "strict liability" law. In other words, under Stark, the intent of the parties is irrelevant).

II. Policy

In compliance with these laws, the Facility does not pay incentives to any person based upon the number of residents admitted or the value of services provided, nor does the Facility pay physician, or anyone else, either directly or indirectly, for resident referrals. The decision to refer residents is a separate and independent clinical decision made by the health care provider. Moreover, the Facility

does not accept any form of remuneration in return for referring its residents to other health care providers. The Facility discharges, transfers or refers residents to other providers based on residents' documented medical needs for the referred services and the ability of the referred provider to meet those needs. The Facility at all times respects and honors a resident's freedom to choose a health care provider.

III. Relationships with Other Health Care Providers

All contracts, leases, and other financial relationships with other providers who have a referral relationship with the Facility will be based on the fair market value of the services or items being provided or exchanged, and not on the basis of the volume or value of referrals of Medicare or Medicaid business between the parties.

ACKNOWLEDGMENT OF RECEIPT

I acknowledge that I have received a copy of the Compliance Manual for Brighton Cornerstone Compliance Program. I have read and comprehend the content of the manual and agree to conduct myself in conformity with all of its requirements, to adhere to the spirit and letter of the Code of Conduct, and to cooperate with management in carrying out the objectives of the Compliance Program.

Acknowledged and agreed: _____

Signature _____

Print Name _____

Job Title or Description _____

Date _____ / _____ / **201** _____