

Independence Care System (ICS)

First Tier, Downstream, & Related Entity (FDR)

Compliance Guide

December 2016

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Independence Care System Compliance Program

Independence Care System's (ICS) Compliance Unit is dedicated to promoting a culture of compliance, reducing or eliminating fraud, waste, abuse, and inefficiencies, as well as ensuring adherence to applicable laws and regulations. ICS expects our employees, first tier, downstream, and related entities (FDRs), affiliated individuals, businesses, and providers to perform their functions ethically, professionally, and in compliance with best practices and all applicable laws and regulations. To assist these entities, ICS is providing this booklet of information and educational resources.

Questions or requests for additional information may be made by:

- **Email:** complianceofficer@icsny.org
- **Phone:** 1-855-427-8477 (1-855-ICS-TIPS)
- **Postal mail:** Compliance Officer - Independence Care System (ICS); 257 Park Avenue South, 2nd Floor, New York, NY 10010

The First Tier, Downstream, and Related Entity (FDR) Compliance Guide

ICS is required by law to provide information and educational resources to all of our first tier, downstream, and related entities (FDRs), affiliated individuals, businesses, and providers. ICS created this guide as an informational and educational resource for FDRs. In addition to providing the required information and educational resources, this guide strives to promote understanding and compliance with the high standards of our compliance program and requirements.

The FDR Compliance Guide will:

- Establish ICS's dedication to responsible and ethical conduct;
- Outline the compliance requirements for ICS's FDRs;
- Provide information about how to report fraud, waste, abuse, and compliance issues;
- Set forth ICS's compliance policies, and code of conduct;
- Clarify the definitions of fraud, waste, and abuse; and
- Review relevant laws and regulations.

Section 1: What are FDRs?

ICS defines FDRs in accordance with Section 10 of Chapter 11 of CMS's Managed Care Manual, Medicare Advantage Application Procedures and Contract Requirements. As such, a **first tier entity** is any party that enters into a written arrangement with ICS to provide administrative or health care services for our members. A **downstream entity** is any party that enters into a written arrangement between ICS and a First Tier Entity. A **related entity** is a party that is related to ICS by common ownership or control and that:

- Performs some of ICS's organization management functions under contract or delegation;
- Furnishes services to ICS members under an oral or written agreement; or
- Leases real property or sell materials to ICS at a cost of more than \$2,500 during a contract period.

Contractors and partners of ICS who perform administrative services that do not relate to Medicare or Medicaid services are not FDRs. For example, the building management company from which ICS leases office space is not an FDR.

If a new contractor is coming onboard at ICS or the role of an existing contractor is changing, the business owner at ICS, in consultation with the Delegation Oversight Manager and the Compliance Officer, will determine whether the contractor meets the definition of an FDR, as outlined above. If the business owner has questions or is unsure whether the contractor meets the definition of an FDR, he or she will reach out to the Director of Compliance, who will determine whether the contractor is an FDR.

Section 2: FDR Compliance Requirements

ICS contracts with first tier, downstream, and related entities in order to provide high-quality administrative and healthcare services to our members. ICS's commitment to excellent service, and legal and regulatory compliance, compels us to ensure that our FDRs are also in compliance with applicable state and federal regulations. ICS is responsible for fulfilling the obligations set forth in our contract with the Centers for Medicare & Medicaid Services (CMS) and the New York State Department of Health (NYSDOH) in addition to meeting the Medicare and Medicaid program requirements. These obligations include ensuring that our FDRs are compliant with the fraud, waste, and abuse policies set forth in this guide. FDRs of ICS must maintain supporting documentation of compliance with the requirements set forth in this guide for a period of ten (10) years and must provide evidence to ICS, upon request, for monitoring and

auditing purposes. Failure to meet the requirements outlined in this guide may lead to a Corrective Action Plan, retraining, or the termination of a contract and relationship with ICS.

PLEASE NOTE: First tier entities are responsible for ensuring that their downstream and related entities are in compliance with this policy and with all applicable federal and state statutes and regulations.

I. Annual FDR Compliance Attestation

ICS defines an authorized representative as an individual who is responsible directly or indirectly for all employees, providers, practitioners, contracted personnel, and vendors who provide healthcare or administrative services under Medicaid and/or Medicare. Examples of positions which may constitute an authorized representative may include, but are not limited to, a compliance officer, director, an account manager/executive or executive officer.

An authorized representative from each FDR is required to attest on behalf of his or her organization that they are organizationally compliant with the code of conduct, compliance policies, fraud, waste, and abuse (FWA) training, Office of the Inspector General (OIG), New York State Office of the Medicaid Inspector General (OMIG), and General Services Administration (GSA) exclusion screening, and promulgation of FWA and compliance reporting mechanism requirements.

ICS will ask each FDR to provide ICS with information regarding their compliance program during the pre-delegation audit and during subsequent annual audits, in order to determine whether their obligations are being met.

II. Standards of Conduct and Compliance Information

ICS expects that each FDR will prevent fraud, waste, abuse, and other improper activity by creating a culture of compliance, detecting any misconduct that may occur at an early stage before it creates a substantial risk, and responding swiftly to compliance issues through appropriate disciplinary and corrective action. ICS's FDRs must either (1) create and broadcast commensurate standards of conduct policies that demonstrate a commitment to detecting, preventing, and correcting non-compliance and that also meets CMS requirements set forth in 42 CFR § 422.503(b)(4)(vi)(A) and 42 CFR § 423.504(b)(4)(vi)(A), or (2) adopt and distribute the copy of ICS's standards of conduct as outlined in this guide to all employees and contractors.

As FDRs are responsible for ensuring that their downstream and related entities are in compliance with this policy and applicable federal and state statutes and regulations, it is

required that FDRs distribute additional compliance information to all employees and contractors upon hire or contact, and annually thereafter. FDRs may choose to use the additional compliance information contained in this guide, or may opt to use alternate materials. At a minimum, alternate compliance information materials must include:

- A detailed description of ICS's compliance program;
- The requirement to report suspected FWA and non-compliance;
- The mechanisms by which FWA and non-compliance can be reported;
- Disciplinary guidelines for non-compliance;
- A non-retaliation policy;
- An overview of relevant laws and regulations including but not limited to the Deficit Reduction Act of 2005, the False Claims Act, and HIPAA; and
- A FWA training requirement.

FDRs must document that each employee and contractor has received, read, understood, and has agreed to comply with the written standards of conduct and compliance program. This documentation must be completed upon hire or contract and must be renewed annually.

III. Fraud, Waste, and Abuse Training

ICS requires all FDRs, employees, and contractors, to complete fraud, waste, and abuse (FWA) training program within 90 days of the initial date of employment or contract, and annually thereafter. Each FDR must attest that all employees and contractors have completed the FWA training, and must maintain documentation of the FWA training. Documentation may include but is not limited to training logs, written attestations, and training programs. Documentation should include information such as:

- Training dates;
- Method of training;
- Materials used for training;
- Employee sign-in sheets or rosters; and
- Additional relevant information.

FDRs may complete the FWA training requirement by utilizing one of the options listed below.

- CMS Medicare Fraud and Abuse Training

http://cms.meridianksi.com/kc/main/pop_up_frm.asp?loc=/kc/ilc/course_info_enroll_info.asp%3Fpreview%3DFalse%26crs_ident%3DC00147&strFunction=width%3D200%2Cheight%3D100&strTable=undefined&strContentID=undefined

- Another FWA Training which meets CMS requirements set forth in 42 CFR § 422.503(b)(4)(vi)(A) and 42 CFR § 423.504(b)(4)(vi)(A)
- CMS deemed FWA training through enrollment into Medicare Part A or B or accreditation Durable Medical Equipment, Prosthetics, Orthotics, and supplies (DEMPOS).

IV. OIG, OMIG, and GSA Exclusion Screening

Medicare, Medicaid, and any other federal/state healthcare program is prohibited from paying for any service or supply provided by a person or entity that is excluded from participating in those programs. Because of this, ICS requires all FDRs to confirm that they are not employing or contracting with individuals or entities that are excluded from participating in federally-or state-funded healthcare programs. To ensure that FDRs are not employing or contracting with excluded providers, they must, upon hire or contract, and monthly thereafter run a data check with the OIG, OMIG, and General Services Administration (GSA) exclusion lists. If an FDR learns that they are employing or contacting with an individual or entity on an exclusion list, the excluded individual or entity must be promptly removed from any work related directly or indirectly to federal/state healthcare programs. The FDR must immediately disclose this information to ICS, and appropriate corrective action must be taken. FDRs must document performance of exclusionary checks, and must maintain records evidencing that each employee and contractor has been screened in accordance with current regulations and requirements. FDRs must immediately disclose any exclusion or other event that may make them ineligible to perform work related to federal and state healthcare programs.

These required screenings can be performed by utilizing the following websites:

- OIG Exclusion Authorities: <http://oig.hhs.gov/exclusions/authorities.asp>
- OMIG Excluded Providers: <http://www.omig.ny.gov/fraud/medicaid-terminations-and-exclusions>
- GSA database of excluded individuals/entities

V. Reporting Fraud, Waste, and Abuse

It is the responsibility of all FDRs of ICS to report observed or suspected fraud, waste, abuse or other improper activity relating to the operation of ICS. Fraud, waste or abuse may be committed by ICS employees, FDRs, contractors, patients, or others.

FDRs may utilize one of the following methods to confidentially report a potential violation of our compliance policies or any applicable regulations:

ICS Reporting—

- ICS has established a toll-free telephone hotline that employees or FDRs may call to file reports anonymously. Anonymous reports of suspicion of FWA can be reported to the Compliance Hotline at 1-855-427-8477 (1-855-ICS-TIPS), by email to complianceofficer@icsny.org, or by mail to Compliance Officer, Independence Care System, 257 Park Avenue South, 2nd Floor, New York, NY 10010.

Medicare and Medicaid Reporting—

- Office of Inspector General (OIG) at 1-800-HHS-TIPS (1-800-447-8477), TTY 1-800-377-4950, Fax 1-800-223-8164

By mail:

US Department of Health and Human Services (HHS)
Office of Inspector General
ATTN: OIG HOTLINE OPERATIONS
P.O. Box 23489
Washington, DC 20026

- Center for Medicare and Medicaid (CMS) at 1-800-633-4227

By mail:

Medicare
ATTN: Beneficiary Contact Center
P.O. Box 39
Lawrence, KS 66044

- New York State Office of the Medicaid Inspector General (OMIG) at 1-877-87-FRAUD (1-877-873-7283)

Electronically at: www.omig.ny.gov/fraud/file-an-allegation

By mail:

NYS OMIG – Bureau of Medicaid Fraud Allegations
800 North Pearl Street

ICS requires each FDR to broadcast confidential reporting mechanisms to all employees and contractors. If an FDR does not maintain their own confidential reporting mechanism, they must broadcast information about ICS's confidential hotline and encourage all employees and contractors to report potential compliance issues including fraud, waste, abuse, conflict of interests, and violations of compliance policies and/or any applicable regulation.

Section 3: ICS Code of Conduct

The following outlines the ethical and legal standards of ICS's compliance program. All employees and contractors are expected to familiarize themselves with the code of conduct and should rely on the standards contained in the code in carrying out their duties. ICS expects that all FDRs will respect these principles and adhere to them when conducting business with ICS. Providers and FDRs are required to adopt and follow a similar code of conduct particular to their own organization and that reflects their own comparable commitment to ethical behavior, compliance, and detecting, preventing and correcting fraud, waste, and abuse. The following standards are intended to provide guidance and to assist FDRs with their compliance obligations; these standards are neither exclusive nor complete.

I. Legal Compliance

- *Fraud and Abuse* – ICS expects that each FDR will prevent fraud, waste, abuse, and other improper activity by creating a culture of compliance, detecting any misconduct that may occur at an early stage before it creates a substantial risk, and responding swiftly to compliance issues through appropriate disciplinary and corrective action. Examples of fraud, waste, and abuse include but are not limited to: offering or paying anything of value, whether in cash or in kind, to another party in return for member referrals; making false representations to obtain payment for any service; and submitting fraudulent or misleading claims to any government entity or third-party payer.
- *Political* – No direct or indirect political contribution (including the use of ICS property, equipment, funds or other assets) of any kind may be made in the name of ICS, or by using ICS funds, unless the compliance officer has certified in writing that such political contribution complies with applicable law. When such permission is given, such contributions shall be by check to the order of the political candidate or party involved, or by such other means as will readily enable the company to verify, at any given time, the amount and origin of the contribution.

- *Discrimination* – ICS is committed to serving all members on an equal basis without regard to race, nationality or ethnic origin, religion, gender, disability or any other personal characteristic with respect to which discrimination is barred by law. Discrimination on these grounds is also prohibited in connection with the hiring and treatment of employees and contractors. In addition, sexual harassment of employees or clients will not be tolerated. ICS seeks to create an environment in which the dignity of each individual is fully respected. Each allegation of harassment or discrimination will be promptly investigated in accordance with applicable human resource policies. To report such behavior, please contact the ICS Department of Human Resources
- *Document retention* – ICS is required to maintain corporate records. Applicable laws and regulations, government agency contracts, and contracts with certain private entities usually require ICS to maintain records for a specified amount of time and stipulate that ICS is subject to penalties, fines, and other actions for failure to do so. It is therefore ICS's policy to:
 - Maintain complete and accurate records in a manner that is compliant with applicable laws, regulations, and contractual or other requirements;
 - Protect the privacy of records that contain sensitive or confidential information, including privileged materials and member information, and prevent their unauthorized use; and
 - Dispose of records that have been maintained for the required retention period in a proper manner.

II. Business Ethics

The following reflects ICS's high ethical and professional standards. The program applies to the full range of ICS's activities. ICS is committed to conducting all of its activities with honesty and integrity. Additionally, employees are expected to act in a manner that promotes ICS's reputation as an organization that exceeds the strict requirements of the law and operates in accordance with the highest ethical and professional standards.

Communication – ICS expects its employees and FDRs to freely discuss issues and ask questions to ensure understanding of relevant policies and procedures, laws, and regulations. Employees and contractors will refrain from making false or misleading statements to, or with regard to, any member, individual, or entity doing business with ICS. Similarly, honesty and candor are expected in all communications about the products and services provided through ICS or its competitors to any member, individual, or entity doing business with ICS. ICS requires honest and open

communication from individuals when communicating with our attorneys and auditors, and expects a general culture of honest and respectful communication in the workplace.

III. Confidentiality

ICS and its employees have access to an array of confidential, sensitive, personal, nonpublic, and proprietary information. ICS respects the privacy of members, employees and FDRs, and strives to maintain strict confidentiality and privacy in accordance with applicable laws and ethical standards. Each ICS employee is charged with the responsibility of actively safeguarding all confidential, sensitive, and proprietary information.

- *Member information* – All member records and information must be kept confidential in accordance with applicable privacy laws and regulations. As a “covered entity” under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), ICS must limit the use and disclosure of protected health information. ICS must also comply with special state confidentiality laws governing HIV-related, mental health, and genetic testing information. ICS has adopted a comprehensive privacy compliance program governing the use and disclosure of member information. All employees who have access to such records must familiarize themselves with this program’s policies and procedures, and adhere to its terms.
- *Nonpublic information* – Nonpublic information consists of nonpublic financial information and nonpublic health information. Nonpublic personal information includes but is not limited to the name, address, Medicaid CIN number, Social Security number, and membership status of individuals affiliated with ICS. Nonpublic protected health information includes but is not limited to a member’s condition, medical information, and information about referrals for medical or behavioral health services and supplies.
- *Proprietary information* – Any information pertaining to ICS’s negotiations with employees or third parties, professional projects, business strategies, payment and reimbursement information, or competitive position must be protected and only shared with employees on a need-to-know basis.
- *Personnel* – All personnel information relating to employees such as salary, benefits, and evaluations shall be treated as confidential.

IV. Conflicts of Interest

Employees are required to act solely in the best interests of ICS when carrying out their job responsibilities and must avoid all activities that constitute or create the appearance of a conflict of interest. ICS has adopted an employee conflicts of interest policy that

contains standards and procedures for avoiding conflicts of interest. All employees are expected to familiarize themselves with this policy. Employees involved in procurement or other sensitive job duties may be required to submit annual conflict of interest disclosure forms.

- *Prohibited activities* – Employees are prohibited from engaging in any of the following activities:
 - Using their position with ICS to profit, directly or indirectly, in any transaction to which ICS is a party. This prohibition includes any involvement by an employee in negotiating, recommending, approving or otherwise influencing the terms of a transaction between ICS and an entity in which the employee has a substantial financial interest.
 - Engaging in outside employment, self-employment or volunteer work that interferes with the performance of their duties for ICS, impairs their prudent and independent business judgment as an ICS employee, or otherwise conflicts with their obligations to ICS.
 - Using or disclosing to a third party any non-public information obtained as a result of their employment for purposes unrelated to the performance of their duties as an ICS employee.
 - Using any property, including but not limited to, intellectual property belonging to ICS for any purpose unrelated to the performance of their duties as an ICS employee.
 - Taking advantage of or otherwise acting upon, for their own personal benefit or the benefit of another party, any business, financial or other opportunity discovered in the course of their employment with ICS that is within the scope of ICS's existing or contemplated operations unless: (i) the opportunity is disclosed fully in writing to ICS's board of directors; (ii) the board of directors declines to pursue such opportunity within a reasonable time period; and (iii) such opportunity does not otherwise result in a conflict of interest or otherwise violate ICS's policies.
- *Potential conflicts of interest requiring prior approval* – Employees are prohibited from engaging in any of the following activities without full disclosure to and the prior written consent of the chief executive officer:
 - Obtaining a substantial financial interest in, or serving as a director or officer of, any entity with which ICS has conducted, or is contemplating the implementation of a transaction;
 - Obtaining a substantial financial interest in, or serving as a director or officer of, any competitor of ICS. The compliance officer shall provide guidance to employees regarding the types of entities that are deemed competitors of ICS.

- Conducting business on behalf of ICS with a former board member, officer or employee of ICS, or an entity in which a former board member, officer or employee has a substantial financial interest.
- Working as an employee or contractor of any entity other than ICS, including his or her own business, for more than 16 hours per month.

V. *Business Relationships*

All business transactions and business relationships must be carried out in a fair and ethical manner. Transactions and relationships will not directly or indirectly benefit the private or outside interests of any one of ICS's employees, and must remain free from offers or solicitation of gifts, favors, or other incentives in exchange for influence or assistance in a transaction. The board of directors expects that directors and officers will respect their obligations to act in the best interests of ICS in fulfilling its non-profit mission.

- *Gifts from members* – Employees are prohibited from using their positions at ICS for personal benefit. Employees may accept gifts of nominal value from members under appropriate circumstances, but are prohibited from accepting tips, personal gratuities, or gifts of significant value.
- *Acceptance of gifts from vendors* – The acceptance of gifts from current or prospective vendors of ICS may also constitute an improper kickback under state and federal law. Accordingly, employees may not solicit or receive any such gifts.
- *Influencing decision making* – Employees are required to act solely in the best interests of ICS when carrying out their job responsibilities. Any personal or outside investments, relationships, transactions or interest, whether direct or indirect, that would or could have an adverse effect on ICS's or an employee's prudent, objective and independent business judgment constitute an unacceptable conflict of interest and are prohibited.
- *Contracting* – All business relationships and transactions must *be and appear to be* fair and impartial. ICS employees may not utilize any "insider" information for any business activity conducted by or on behalf of ICS.

VI. *Protection of Assets*

ICS employees must use good judgment to make prudent and effective use of ICS's resources.

- *Using resources exclusively for ICS business* – Employees may use ICS resources solely for the purpose of carrying out their job responsibilities. ICS's facilities, equipment, staff and other assets may not be used by an employee for

personal benefit or to engage in any outside business or volunteer activity without the prior approval of the compliance officer. Employees may not use their affiliation with ICS to promote any business, charity or political cause. Employees shall seek reimbursement for expenses only to the extent such expenses have been incurred in the course of carrying out their job duties and in accordance with ICS's expense reimbursement policies.

- *Using resources exclusively for tax-exempt purposes* – ICS is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code. This status generally requires ICS to engage in only those activities that are within its approved tax-exempt purpose. ICS's primary tax-exempt purpose is operating a managed long term care plan. Employees may not use ICS's resources to engage in any business activity, even if for ICS's benefit, that is outside the scope of ICS's tax-exempt purpose without the approval of ICS legal counsel.

Section 4: ICS's Commitment to Compliance

ICS has adopted a compliance program with the goal of carrying out all of its activities in accordance with law and the highest ethical standards. The effectiveness of the program hinges on the active participation of all employees in preventing, detecting and appropriately responding to fraud, abuse or other misconduct. Working together, we can make ICS a model of excellence and integrity in the community. ICS has procedures for identifying, correcting, preventing, and monitoring issues of non-compliance. ICS is committed to taking prompt corrective action to address any potential fraud, waste, abuse or other improper activity identified through internal audits, investigations, reports, by employees or other means.

I. Internal Investigations

It is ICS's policy that all reports of fraudulent, wasteful, abusive or other improper conduct, whether made through the compliance hotline or otherwise, are promptly reviewed and evaluated by the compliance officer. The compliance officer determines, in consultation with legal counsel and other ICS personnel as necessary, whether the report warrants an internal investigation. If so, the compliance officer, or his/her designee, coordinates the investigation, issues a written report of findings and proposes any corrective action that may be appropriate. Employees are expected to cooperate with the compliance officer in resolving reported noncompliance or FWA, and will not be subject to retaliation by ICS for doing so in good faith.

The compliance officer, or his/her designee also conducts investigations into any FWA-related misconduct by FDRs and providers for ICS's MLTC and FIDA plans. ICS requires cooperation of FDRs, Medicare health plans and prescription drug plans during

any investigations that may directly or indirectly involve their organization or individuals associated with their organization.

ICS has also developed policies and procedures to prevent and detect misconduct, fraud, waste, and abuse related to the Medicare program. The Compliance Department is responsible for reducing or eliminating Medicare Parts C and D benefit costs due to FWA; reducing or eliminating fraudulent or abusive claims paid for with federal and state dollars; preventing illegal activities; identifying enrollees with overutilization issues; identifying and recommending providers for exclusion, including those who have defrauded or abused the system, to the National Benefit Integrity Medicare Drug Integrity Contractor (MEDIC) and/or law enforcement; referring suspected, detected or reported cases of illegal gun activity to MEDIC and/or law enforcement; conducting case development and support activities for MEDIC and law enforcement investigations; and assisting law enforcement by providing information needed to develop successful prosecutions.

Potential FWA or misconduct for state-funded programs will be reported to the New York State Office of the Medicaid Inspector General (OMIG).

Anonymous reports of suspicion of FWA can be reported to the ICS compliance hotline at 1-855-427-8477 (1-855-ICS-TIPS), by email to complianceofficer@icsny.org, or by postal mail to Compliance Officer, Independence Care System, 257 Park Avenue South, 2nd Floor, New York, NY 10010.

II. ICS Monitoring and Auditing

ICS seeks to identify compliance issues and FWA at early stages before they develop into significant legal problems. ICS believes that monitoring (regular reviews of operations) and auditing (formal compliance reviews) are critical components to a successful compliance program and programs to detect FWA. At the beginning of each year the compliance officer develops a monitoring and auditing work plan that, at a minimum, addresses risk areas that will most likely affect ICS members and ICS compliance (including payment and financial integrity). The work plan includes a schedule organized by quarter of all monitoring and auditing activities.

In addition to the auditing and monitoring internal to ICS, the Compliance Department also monitors FDRs and contracted providers for compliance with regulatory requirements and contractual obligations, and follows the guidance and recommendations in Section 50.6.6 of Chapter 21 of the Medicare Managed Care Manual. ICS's annual monitoring work plan includes ICS audits of first tier entities. Routine monitoring and audit reviews are included as part of ICS's contractual

agreement with its FDRs and providers. Results implicate contractual corrective actions or, if corrective action is not feasible, termination of contract.

The results of the monitoring reviews and audits are summarized in a standard written report that outlines the review's objective, scope and methodology, findings and recommendations. The corrective actions required to respond to monitoring findings are documented. In addition to formal audits, ICS regularly tracks and documents compliance using dashboards, scorecards and self-assessment tools that show the extent to which operational areas and FDRs are meeting compliance goals.

III. Non-Retaliation

Employees and FDRs are protected from retaliation for good faith participation in ICS's compliance program. No employee or FDR who files a report of suspected fraud, waste, abuse or other improper activity in good faith will be subject to retaliation by ICS in any form. Prohibited retaliation includes, but is not limited to, terminating, suspending, demoting, failing to consider for promotion, harassing or reducing the compensation of any individual or group of individuals. Employees and FDRs are notified that they are protected from retaliation for False Claims Act complaints in addition to any other applicable anti-retaliation protections. Employees and FDRs should immediately report any such retaliation to the compliance officer.

Section 5: Fraud, Waste, and Abuse

I. What is Fraud, Waste, and Abuse?

The Compliance Department has developed policies and procedures to prevent and detect fraud, waste and abuse. It is the responsibility of all employees to report observed or suspected fraud, waste, abuse or other improper activity relating to the operation of ICS.

- *Fraud* –Any type of intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or herself or to ICS or another person.
- *Waste* –The thoughtless or careless overutilization, mismanagement, or squandering of resources and services or other practices that result in unnecessary cost to the state or federal government or ICS.
- *Abuse* –Practices that are inconsistent with sound fiscal, business or medical practices and that result in an unnecessary cost to the state or federal government or ICS, or result in reimbursement of services that are not medically necessary or that fail to meet professionally recognized standards for health

care. Generally, abuse involves payment for items or services when there is no legal entitlement to that payment and the healthcare provider has knowingly or intentionally misrepresented facts to obtain payment.

II. Examples of FWA

Examples of the types of activities that must be reported by employees include, *but are not limited to*, the following:

- Billing the government for individuals who are not members
- Duplicate billing
- Failing to provide all medically necessary services for which ICS receives reimbursement
- Inflating or otherwise misrepresenting ICS's costs on cost reports filed with government agencies or private funders
- Billing the government for a member if the employee is aware that the member or his or her family has obtained coverage fraudulently
- Submitting inaccurate or misleading data or reports to government agencies
- Theft or other misuse of ICS's funds or property by employees or contractors
- Violations of ICS's compliance policies or other guidance
- Violations of laws, regulations or government contracts

Section 6: Relevant Laws and Regulations

ICS is committed to carrying out its business in full compliance with both the letter and spirit of all applicable local, state, and federal laws and regulations. Illegal conduct by employees will not be tolerated. Employees are expected to seek clarification from their supervisor, the compliance officer or other ICS personnel whenever they are unsure about the interpretation of applicable laws or regulations. Applicable federal law and regulations include, but are not limited to: Title XVIII of the Social Security Act (Medicare); Medicare regulations governing Part C found at 42 CFR §§ 422 et seq); Patient Protection and Affordable Care Act; Health Insurance Portability and Accountability Act (HIPAA); False Claims Act (31 U.S.C. §§ 3729-3733); Federal Criminal False Claims Statutes (18 U.S.C. §§ 287.1001); Beneficiary Inducement Statute (42 U.S.C. §§1320a-7a(a)(5)); Civil Monetary Penalties of the Social Security Act (42 U.S.C. §1395w-27(g)); Physician Self-Referral ("Stark Statute") (42 USC §1395nn); Fraud and Abuse, Privacy and Security Provisions of the Health Insurance Portability and Accountability Act, as modified by HITECH Act; prohibitions against employing or contracting with persons or entities that have been excluded from doing business with the federal government (42 USC §1395w-27(g)(1)(G); Fraud Enforcement

and Recovery Act of 2009. In addition, sub-regulatory guidance produced by CMS and HHS such as manuals, training materials, Health Plan Management System (HPMS) memos and guides may apply.

I. The Deficit Reduction Act

Because ICS participates in the Medicaid Program, we are required to comply with the terms of the Deficit Reduction Act of 2005 (DRA). The DRA requires any organization receiving more than \$5 million in federal Medicaid funds per year to adopt a compliance program in accordance with the federal law and to educate employees and FDRs of the terms of the False Claims Act. Failure to comply could restrict Medicaid reimbursements.

II. The Federal False Claims Act (FCA)

The FCA and similar state laws prohibit the knowing submission of false or fraudulent claims or the making of a false record or statement in order to secure payment from a government-sponsored program.

ICS is committed to detecting and preventing fraud, waste, and abuse, and has processes and programs in place to review and ensure that billing procedures satisfy applicable government program requirements. FDRs and employees of ICS shall adhere to all applicable federal and state laws, regulations, and requirements when billing identifiable federal and state government sponsored programs. FDRs and employees of ICS are obligated to report any ethical misconduct, including concerns about potential false claims, to the compliance officer or other appropriate internal authority. As set forth elsewhere in this program, any retaliation against any individual making a report of a violation of the FCA is prohibited.

- *Penalties* – FCA penalties include the claimant’s costs and attorney fees plus fines of \$5,500 to \$11,000 per claim, in addition to penalties up to three times the value of the claim. These monetary fines are in addition to potential incarceration, revocation of licensures, and/or becoming an “excluded” individual. Excluded individuals and entities are prohibited from participating in federally-funded healthcare programs
- *Whistleblower protections* – The FCA allows individuals to bring lawsuits against organizations or individuals who are defrauding the government in ways that do not include tax fraud. These individuals, known as whistleblowers, are generally entitled to receive a percentage of recovered funds if the government decides to move forward with a case and settles or wins. If the government decides not to pursue the issue, the individual may pursue the issue alone, and is still entitled to

a percentage of recovered funds. State and federal laws protect whistleblowers from retaliation.

III. Stark Law

Physician self-referral is the practice of a physician referring a patient to a medical facility in which he or she has a financial interest. The Stark Law governs the practice of physician self-referral.

Self-referrals and referrals to family members under the Medicare and Medicaid program are additionally restricted under the Omnibus Budget Reconciliation Act, and the Social Security Act. Any violations of the Stark Law, and any practice of physician self-referral, should be reported to ICS's compliance officer and must be reported to CMS via their self-disclosure process.

IV. Anti-Kickback Statute

Under the federal anti-kickback statute, it is illegal for any employee or contractor to knowingly and willfully solicit, receive, offer or pay anything of value to another person in return for the referral of a member, or in return for the purchasing, leasing, ordering or arranging for any item or service reimbursed by a federal health care program such as Medicaid or Medicare. Penalties for violating the anti-kickback statute include imprisonment, criminal fines, civil monetary penalties and exclusion from government health care programs. A similar New York law prohibits the exchange of remuneration for referrals for items or services covered by the state's Medicaid program.

V. HIPAA, HITECH and GINA

- *HIPAA Privacy* – The HIPAA privacy rule requires all providers to take reasonable steps to safeguard the protected health information (PHI) of members and patients. A member's PHI is subject to the protections under the privacy rule, but it is also protected under the contract ICS has with its members, providers, and FDRs. PHI can have a paper, electronic, or oral format and is information that pertains to a specific individual. PHI generally includes but is not limited to the following:
 - Health care claims or health care encounter information, such as documentation of doctors visits and notes made by physicians and other provider staff;
 - Health care payment and remittance advice;
 - Coordination of health care benefits;
 - Health care claim status;
 - Enrollment and disenrollment in a health plan;

- Eligibility for a health plan;
 - Health plan premium payments;
 - Referral certifications and authorization;
 - First report of injury;
 - Health claims attachments;
 - Health care electronic funds transfers (EFT) and remittance advice; and
 - Other transactions that HHS may prescribe in future regulations.
- *HIPAA Security* – The HIPAA Security Rule (SR) pertains to electronic protected health information (ePHI), and requires covered entities to adopt national standards for safeguarding the confidentiality, integrity, and availability of these records. Covered entities must ensure that appropriate administrative, physical, and technical safeguards have been put in place to protect the ePHI that is collected, maintained, used, or transmitted by their workforce. ICS expects all FDRs to have in place appropriate policies and procedures that outline compliance with the HIPAA SR, and the expectation that the workforce will comply. Additionally, access to member PHI should be role-based; it is expected that the only employees of the covered entity who should have access to the ePHI are those with a business need to do so.
 - *The HITECH Act* – The Health Information Technology for Economic and Clinical Health Act (The HITECH Act) which was part of the American Recovery and Reinvestment Act of 2009, made some significant changes to the privacy and security rules under HIPAA. Most of the changes were effective on, or after February 17, 2010, although some of the requirements have earlier or later effective dates. As healthcare providers move toward exchanging large amounts of health information electronically, this legislation aims to ensure that such information remains private and secure. Providers and relevant staff are trained on, and required to be familiar with this legislation.
 - *The Genetic Information Nondiscrimination Act (GINA)* – The Genetic Information Nondiscrimination Act (GINA) provides certain privacy protections for genetic information. Specifically, GINA provides that genetic information is health information and prohibits the use or disclosure of genetic information by health plans (other than long-term care plans) for underwriting purposes. The HIPAA privacy regulations have been revised to address the use and disclosure of genetic information. Providers and relevant staff are trained regarding, and required to be familiar with, this legislation.



ICS's FDR Compliance Program Guide

Attestation Form

Independence Care System (ICS) is dedicated to preventing fraud, waste, and abuse (FWA) and non-compliance, as well as to adhering to all required HIPAA regulations. In order to do this, we maintain a comprehensive compliance program that includes regular training of our employees. Please read the following statement and if you agree, certify it by signing and dating the bottom of this form.

*By signing this form, I attest that I understand ICS's compliance program, as well as ICS's policies on preventing and reporting fraud, waste and abuse. I have received and read ICS's **FDR Compliance Program Guide** and understand its compliance and code of conduct requirements.*

In addition, I have shared the Program Guide with all of my company's associates who conduct work on behalf of ICS.

Name (please print): _____

Title: _____

Company Name: _____

Signature: _____

Date: _____