WESTMOUNT HEALTH FACILITY

Compliance Manual

Rev 1/14

TABLE OF CONTENTS

INTRODUCTION 2

COMPLIANCE COMMITTEE AND COMPLIANCE OFFICER 3

CODE OF CONDUCT 4

STANDARDS OF CONDUCT 5
- **A. Resident Care and Resident Rights** 5
- **B. Referrals** 6
- **C. Billing and Claims; Cost Reports** 8
- **D. Non-Discrimination in Resident Services and Charges** 10
- **E. Confidentiality** 11
- **F. Business Entertainment or Gifts** 12
- **G. Conflicts of Interest** 13
- **H. Governance** 14
- **I. Credentialing** 15

EDUCATION AND TRAINING 16
- **A. Initial and Annual Training** 16
- **B. Periodic Training** 16
- **C. Failure to Attend Required Training** 16
- **D. Ongoing Communication and Changes in Compliance Manual** 16

REPORTING REQUIREMENTS 18
- **A. Reporting** 18
- **B. Examples of Activities to be Reported** 18
- **C. Confidentiality** 18
- **D. Investigations** 19
- **E. Non-Retaliation** 19

DISCIPLINARY PROCEDURES 20

MONITORING AND AUDITING 21

SUBPOENAS AND SEARCH WARRANTS 22
- **A. Subpoenas** 22
- **B. Search Warrants** 23

APPENDIX "A" - STATE AND FEDERAL FALSE CLAIMS LAWS AND WHISTLEBLOWER PROTECTION 25

EMPLOYEE/PROFESSIONAL STAFF MEMBER COMPLIANCE CERTIFICATION 45
(REVISED 4/02)

INTRODUCTION

Westmount Health Facility ("Westmount") is dedicated and committed to meeting high ethical standards and compliance with all applicable laws in all activities regarding the operation of Westmount. This commitment and dedication is essential to Westmount meeting its mission and is critically important because a significant portion of Westmount's services are reimbursed through governmental programs which require that Westmount's business be conducted with complete integrity.

To assure that Westmount's operations are being conducted in compliance with applicable law and the highest ethical standards, Westmount has established a Compliance Program ("Program") under the direction of a Compliance Officer. A Compliance Committee has been established to oversee the implementation and operation of the Program.

COMPLIANCE COMMITTEE AND COMPLIANCE OFFICER

The Compliance Officer is:

Name	Position	Extention
Betsy Henkel	Controller	7664

The Members of the Compliance Committee are:

Name	Position	Extension
Lloyd F. Cote	Administrator	6548
Dr. Socolof	Medical Director	8784
Kylle Baker	Director of Nursing	8782
Kendra Raymond	MDS Coordinator	8781
Betsy A. Henkel	Controller	7664
Mary Cochran	Admissions Screener	8777
Patricia Hawley	Health Information Manager	8783

CODE OF CONDUCT

It is the policy of Westmount to provide services in compliance with all state and federal laws governing its operation and consistent with the highest standards of business and professional ethics. This policy is a solemn commitment to our residents, our community, to those governmental agencies that regulate Westmount and to ourselves.

All Westmount employees, as well as those professionals who enjoy professional staff privileges, must carry out their duties for Westmount in accordance with this policy. To assist employees and professional staff with their obligation to comply with this policy, this Manual includes standards of conduct in a number of specific areas. Conduct that does not comply with these standards is not authorized by Westmount and is outside the scope of employment or professional staff membership at Westmount.

Any violation of applicable law, the standards contained in this Manual, or deviation from appropriate ethical standards, will subject an employee or independent professional to disciplinary action, which may include oral or written warning, disciplinary probation, suspension, demotion, dismissal from employment or revocation of privileges. These disciplinary actions also may apply to an employee's supervisor who directs or approves the employee's improper actions, or is aware of those actions but does not act appropriately to correct them or who otherwise fails to exercise appropriate supervision.

If, at any time, an employee or professional staff member becomes aware of any apparent violation of Westmount's policies, he or she must report it in accordance with the reporting requirements of this Manual. All persons making such reports are assured that such reports will be treated as confidential to the extent permissible and that such reports will be shared only on a bona fide need to know basis. Westmount will take no adverse action against persons making such reports in good faith and without malicious intent whether or not the report ultimately proves to be well founded. If an employee or professional staff member does not report conduct violating Westmount's policies, the employee or professional staff member may be subject to disciplinary action up to and including termination of employment or revocation of privileges.

The laws affecting the operation of Westmount's activities are complex and many. In addition, this Manual addresses, in general terms, only several of the more important legal and ethical principles affecting Westmount's activities. Their mention in this Manual is not intended to minimize the importance of other applicable laws, professional standards, or ethical principles. It is not expected that each employee will be fully versed in all laws of permissible activities involved in their work. Therefore, if an employee has a question regarding the legality or propriety of a course of action, the employee should seek guidance from his or her supervisor or from the Compliance Officer before taking any action.

STANDARD OF CONDUCT

A. Resident Care and Resident Rights

It is Westmount's policy to provide the highest quality of care to its residents. Westmount believes that state and federal regulations governing Westmount's operation provide a minimum baseline of care standards which Westmount strives to exceed in the provision of care and services to Westmount's residents.

Each resident will receive services in accordance with a comprehensive plan of care developed by an interdisciplinary care team based on periodic comprehensive assessments of the resident's condition. Each plan of care is designed to ensure that Westmount provides the necessary care and services to attain or maintain a resident's highest practicable physical, mental and psychosocial well-being.

Each resident is entitled to a dignified existence, self determination and the provision of care and services in a manner and in an environment that promotes the maintenance or enhancement of a resident's quality of life. It is Westmount's policy to protect, promote and foster for each resident his/her rights as a resident of the Westmount.

Westmount has developed policies and procedures to ensure quality of care and the protection and promotion of resident rights which are to be adhered to by Westmount's staff. It is not the intent of this Manual to set forth all such policies and procedures but to identify several of the more significant one's which are:

1. Comprehensive assessments for each resident will be conducted in accordance with applicable federal and state laws and regulations;

2. All resident plans of care will be developed by an interdisciplinary care team based upon the periodic comprehensive assessment of the resident's condition which shall include measurable objectives and timetables to meet the resident's medical, nursing, mental and psychosocial needs;

3. All services and care required by a resident's plan of care will be provided to the resident by qualified staff;

4. Residents are free from verbal, mental, sexual or physical abuse, corporal punishment or involuntary seclusion.

Westmount's policies and procedures with regard to resident rights and resident care are available from the Compliance Officer, the Administrator's office, the Director of Social Services or the Director of Nursing.

B. Referrals

Federal and state law prohibit Westmount and its employees from (1) soliciting or accepting or (2) offering or paying remuneration in exchange for referrals of patients eligible for Medicare, Medicaid or another federal health care program. Federal and state law also prohibit (1) the offering or payment or (2) the soliciting or receipt of remuneration in return for directly purchasing, leasing, ordering, or recommending the purchase, lease or ordering of any goods, facilities, services or items covered under the benefits of Medicare, Medicaid or other federal health programs. The term "remuneration" broadly covers the transferring of anything of value in any form or manner whatsoever. Remuneration is not limited to bribes, kickbacks and rebates. These federal and state laws are broadly written to prohibit Westmount and its employees from knowingly and willfully offering, paying, asking or receiving any money or other benefit, directly or indirectly, overtly or covertly, in cash or in kind. These laws are violated even if only one purpose of a payment arrangement is to influence referrals or the procuring of goods or services.

There are many transactions that may violate these laws. It is impossible to list each and every potential violation of these laws. For your benefit, the following examples are illustrative of prohibitive activity under these laws:

1. Receiving free goods or services from a vendor in exchange for the purchase of other goods and services;

2. The routine waiver of co-insurance payments and deductibles;

3. The offering or making of gifts, loans, rebates, services or payments of any kind to an individual or entity that is an actual or prospective referral source;

4. Entering into a professional service, management service or consulting service agreement where payment is based on other than fair market value or is based on the volume of referrals, i.e., percentage of revenue generated.

Federal regulations known as the "Safe Harbor" regulations provide that certain payment practices will not violate these laws if the regulatory requirements for such payment practices are adhered to. The "Safe Harbor" regulations are intended to help providers protect against abusive payment practices while permitting legitimate ones. If an arrangement fits within a "Safe Harbor" it will not create a risk of criminal penalties and exclusion from the Medicare, Medicaid or other federal health care programs. "Safe Harbor" protection is available for certain payment practices, including the following:

1. Investment interest;

2. Space rental;

3. Equipment rental;

4. Personal service and management contracts;

5. Sale of practice;

6. Referral services;

7. Warranties;

8. Discounts;

9. Payments to employees;

10. Group purchasing organizations;

11. Certain waivers of beneficiary co-insurance and deductible amounts by hospital;

12. Increased coverage, reduced cost sharing amounts or reduced premium amounts offered by health plans;

13. Price reductions offered to health plans.

Analysis of payment practices under these laws and the "Safe Harbor" regulations is complex and depends on the specific facts and circumstances of each transaction. Employees should not make unilateral judgments on the availability of a "Safe Harbor" for a payment practice, investment, discount or other arrangement. These situations should be brought to the attention of the Compliance Officer for review with legal counsel.

As a result of the foregoing, **all contracts and arrangements with actual or potential referral sources and all contracts and arrangements with vendors must comply with applicable state and federal laws and regulations. All personal service, management service and consulting service agreements must comply with applicable state and federal laws and regulations. Moreover, any other financial or other business arrangement between Westmount and other health care professionals or providers must be structured to comply with all applicable state and federal laws and regulations.**

If questions arise regarding whether a proposed business arrangement, financial arrangement, or contract is in compliance with federal or state law, an employee is required to seek guidance from the Compliance Officer who in turn may seek appropriate guidance from legal counsel.

C. Billing and Claims; Cost Reports

Westmount has an obligation to its residents, third party payors and the state and federal government to exercise diligence, care and integrity when submitting claims for payment. The right to bill the Medicare and Medicaid programs carries a responsibility that may not be abused. Westmount is committed to maintaining the accuracy of every claim it processes and submits. Many employees have responsibility for entering charges and procedure codes. Each of these individuals is expected to monitor compliance with applicable billing rules. Any false, inaccurate, or questionable claims should be reported immediately to the employee's supervisor or the Compliance Officer.

False billing is a serious offense. Medicare and Medicaid rules prohibit knowingly and willfully making or causing to be made any false statement or representation of the material fact in an application for benefits or payment. It is also unlawful to conceal or fail to disclose the occurrence of an event affecting the right to payment with the intent to secure payment that is not due. Examples of false claims include:

1. Claiming reimbursement for services that have not been rendered;

2. Filing duplicate claims;

3. "Upcoding" a resident's condition to a higher RUGs category;

4. Including inappropriate or inaccurate costs on cost reports to be submitted under the Medicare or Medicaid programs;

5. Billing for services or items that are not medically necessary;

6. Failing to provide medically necessary services or items;

7. Billing excessive charges.

With respect to the submission of claims to the Medicare or Medicaid program, it is Westmount's policy that claims must: (1) be accurate and timely submitted; and (2) be only for items or services that (a) are medically necessary, (b) fall within the coverage guidelines contained in applicable laws, rules and regulations, and (c) are documented in the resident's medical record. In this regard:

1. Prior to submitting a claim for payment, it is necessary to verify that all documentation for services reflected on the claim, such as physician orders and certificates of medical necessity, are available in a proper and timely manner;

2. Claims may only be submitted when appropriate documentation supports the claim and only when such documentation is maintained and available for audit and review;

3. Documentation which serves as the basis for a claim must be appropriately organized in legible form so that such documentation may be audited and reviewed;

4. Diagnosis and procedures reported on reimbursement claims must be based on the medical record and other documentation;

5. Documentation necessary for accurate code assignment must be made available to all employees with coding responsibility; and

6. Compensation for billing department coders and billing consultants shall not provide for any financial incentive to improperly upcode claims.

With regard to the filing of cost reports, it is Westmount's policy that all Medicare and Medicaid cost reports must be prepared utilizing generally accepted accounting principles based upon documents and reports that are maintained in Westmount's day to day business. Cost reports must document only those costs which Westmount's employees and/or agents believe in good faith are allowable. Employees and agents must provide accurate and complete documentation and reports to the business office in connection with the preparation of cost reports.

With regard to claim submissions and cost reporting, the following conduct is specifically prohibited:

1. Claims for payment or reimbursement of any kind that are false, fraudulent, inaccurate or fictitious;

2. Falsified medical records, time cards or other records used as the basis for submitting claims;

3. For services that must be coded, use of a code that does not accurately describe the documented service when there is a more accurate code that could have been used. This includes post-dating orders or signatures. Late entries should include an explanation of reason for delay in entry;

4. Bills submitted to Medicare, Medicaid or applicable insurance plan for items or services which are known are not covered by Medicaid, Medicare or applicable insurance plan;

5. Filing claims for the same item or service to more than one payor source whereby Westmount will receive duplicate or double payments;

6. Submission of claims without the availability of adequate documentation;

7. Falsification of any report or document used to document the cost of utilization of services by payor source;

8. Failure to report a known error or inaccuracy in any cost report or underlying document used to prepare a cost report; and

9. Recording inappropriate, inaccurate, or non-allowable costs on a cost report.

Any employee or professional staff member who discovers an error or inaccuracy in any claim for payment for health care services that has been submitted or will be submitted should alert his or her supervisor, the Chief Fiscal Officer or the Compliance Officer. Any employee who discovers an error or inaccuracy in any cost report that has been submitted or will be submitted should alert his or her supervisor, the Chief Financial Officer or the Compliance Officer.

D. Non-Discrimination in Resident Services and Charges

It is Westmount's policy, as required by state and federal law, not to discriminate in the admission, retention and care of residents because of race, color, blindness, national origin, sex, sexual preference, religion, sponsorship or source of payment. Each resident will receive medically necessary items and services that, in the opinion of the interdisciplinary care group and as set forth in the resident's plan of care, are required to assure the resident attains or maintains the highest practicable physical, psychosocial and mental well-being.

Such medically necessary items and services shall be offered to the resident regardless of the resident's source of payment. Charges for all items and services provided shall be based upon Westmount's usual and customary charges. Nothing of value, including but not limited to the offer of free of services, shall be offered to residents or prospective residents to induce them to utilize Westmount's services.

Under appropriate circumstances, Westmount may provide financial accommodation (such as allowing monthly payments over time) or may waive resident co-insurance payments or deductible amounts based on an assessment of the individual resident's financial condition and a determination that the payment of such co-insurance payment or deductible amount would cause a financial hardship for the resident. Any such financial accommodation must be based on financial hardship, documented in writing and approved by Westmount's Chief Financial Officer and the Compliance Officer. Any approved waiver of resident co-insurance payment or deductible amounts must be appropriately disclosed to all third party payors responsible for the resident's bill.

In addition, it is Westmount's policy, as required by state and federal law, not to charge, for any service provided to a resident under Medicaid, money or other consideration at a rate in excess of Westmount's established Medicaid reimbursement rate. Moreover, it is Westmount's policy not to charge, solicit, accept or receive in addition to any amount otherwise required to be paid under Medicaid any gift, money, donation or other consideration (other than a charitable, religious, or

philanthropic contribution from an organization or from a person unrelated to the patient) - (a) as a precondition of admitting a resident or (b) as a requirement for the resident's continued stay at Westmount.

The following activities are specifically prohibited under this Standard of Conduct:

1. Failure to provide services that are either (a) ordered by the resident's physician; (b) indicated as necessary by the resident's most recent MDS assessment; and/or (c) contained in the resident's plan of care.

2. Rendering care based upon the resident's payor source without regard for the resident's needs and/or state of preferences;

3. Waiver of resident deductibles and/or co-insurance payments without advanced written approval of the Compliance Officer;

4. The offering or payment of anything of value, including but not limited to free services, to any resident or prospective resident to induce such individual to utilize Westmount's services;

5. Discounts, credits, charity care or other arrangements that have not been approved in writing by the Compliance Officer;

6. Discriminating in the admission, retention and care of residents on the basis of race, color, blindness, national origin, sex, sexual preference, religion, sponsorship or source of payment;

7. Charge a Medicaid resident for Medicaid covered services provided by Westmount any money or consideration at a rate in excess of Westmount's established Medicaid rate; and

8. Charge, solicit, accept or receive any gift, money, donation or other consideration as (a) a precondition of admitting a resident to Westmount or (b) as a requirement for a resident's stay at Westmount, except for charitable, religious or philanthropic contributions from an organization or a person unrelated to the resident.

E. Confidentiality

Employees and professional staff members possess sensitive, privileged information about residents and their care. Residents properly expect that this information will be kept confidential. Westmount takes very seriously any violation of a resident's confidentiality. Discussing a resident's medical condition or providing any information about a resident to anyone other than hospital personnel who need the information or other authorized persons will result in disciplinary action.

Employees and professional staff should not discuss residents outside Westmount or with their families.

Westmount is required to maintain the confidentiality of each resident's medical record. In this regard, medical records may not be released except with the authorization of the resident unless otherwise required or permitted by law. Special confidentiality requirements apply with regard to medical records relating to HIV infection and AIDS. Medical records should not be physically removed from Westmount, altered or destroyed. Employees who have access to medical records must exercise their best efforts to preserve their confidentiality and integrity and no employee is permitted access to the medical record of any resident without a legitimate reason for doing so. If a question arises as to the permissibility of the release of a resident's medical record or any information contained therein, the employee should seek guidance from the employee's supervisor or the Compliance Officer.

Additionally, employees are to treat as confidential Westmount's proprietary business assets including: valuable ideas, business plans, and other information about Westmount's business. Westmount's employees should respect Westmount's assets as they would their own. No employee shall divulge to unauthorized persons, either during or after their employment, any information of a confidential nature connected with the business of Westmount. Examples of confidential business information include: personnel information, such as job title, level, duties, skill or salary; or any information disclosure of which could adversely affect the business interests of Westmount.

F. Business Entertainment or Gifts

Westmount recognizes that business dealings may include shared meals or other similar social occasions which may be proper business expenses and activities. More extensive entertainment, however, only rarely will be consistent with Westmount's policy and should be reviewed and approved in advance by the Compliance Officer before the employee may partake of or offer such entertainment.

Employees may not receive any gift under circumstances that could be construed as an improper attempt to influence Westmount's decisions or actions. Moreover, employees may not receive any gift from any vendor who provides services to Westmount or is seeking to provide services to Westmount or from any actual or potential patient referral sources. When an employee receives a gift that violates this policy, the gift should be returned to the donor and reported to the Compliance Officer. Gifts may be received by employees when they are of such nominal value that they would not reasonably be perceived by anyone as an attempt to effect the judgment of the recipient, for example, token promotional gratuities from suppliers, such as advertising novelties marked with the donor's name, are not prohibited under this policy.

No employee may make a cash gift or non-cash gift of more than nominal value to any officer, director or employee of a firm or entity or any individual that is an actual or prospective vendor of Westmount or an actual or potential source of referrals.

Under no circumstances may an employee of Westmount pay for the meals, refreshment, travel, lodging expenses or give anything of value to a government employee (state, federal or local) who in the course of his or her official conduct may investigate, survey or otherwise deal with Westmount.

Moreover, no employee may charge, solicit, accept or receive in addition to any amount otherwise required to be paid by third party payors, any gift, money or other consideration from a resident or organization or person related to a resident as a pre-condition of admission or as a requirement for continued stay at Westmount.

Further, no employee may request and/or accept any remuneration, tip, gratuity or gift in any form from a resident, resident's family or sponsor for any services provided or arranged for or for denial of services by Westmount other than specified fees ordinarily paid for care excluding donations, gifts and legacies given in behalf of Westmount.

If an employee has any question as to whether (1) the receipt of a gift or offering of a gift or (2) the participation in an entertainment event or the offering to another the opportunity to participate in an entertainment event violates this policy, the employee is required to seek guidance from the Compliance Officer.

G. Conflicts of Interest

No employee should place himself or herself or allow himself or herself to be placed in a situation where the employee's personal interests might conflict with the interests of Westmount. Westmount recognizes and respects an individual employee's right to invest or participate in activities outside of his/her employment provided that these in no way conflict with Westmount's interests or welfare and do not interfere with the employee's responsibilities to Westmount or the effectiveness of the employee's job performance.

Although it is difficult to set forth all possible situations which might be considered as conflicting with Westmount's interests, the following are examples of situations which employees, including members of their immediate families, must avoid:

1. No employee should perform any outside employment or engage in any outside activities which interfere with the effective performance of the employee's duties as a Westmount employee;

2. No employee shall have a financial interest in a firm or entity which is doing, or seeking to do, business with Westmount or which is a competitor of Westmount. However, ownership of less than 1% of the securities of a publicly traded company shall not be considered significant or contrary to this policy;

3. No employee should render services in any capacity, such as a director, officer, employee or consultant to any person or firm that is competitive with Westmount, provides services to Westmount or is a third-party payor with regard to services provided at Westmount;

4. No employee should use their position at Westmount for personal gain such as by soliciting or accepting for personal benefit business opportunities that might otherwise accrue to the benefit of Westmount;

5. No employee should use for his or her personal benefit, or disclose to unauthorized persons, any confidential or proprietary information about Westmount or its operation;

6. No employee should borrow money from individuals or firms (other than banks and/or lending institutions) doing, or seeking to do, business with Westmount;

7. No employee should compete with Westmount by selling or leasing or offering to sell or lease services or products similar to those services or products offered by Westmount;

8. No employee should purchase services or products for Westmount from their family members or from business organizations with which they or their family members are associated, without first obtaining written permission from the Compliance Officer;

9. No employee or member of their immediately family should accept significant gifts, discounts or other preferred personal treatment from any person associated with a present or prospective customer, competitor or supplier of Westmount;

10. No employee should have outside employment or business interests that place the employee in a position of appearing to represent Westmount; and

11. No employee may use Westmount's assets for personal benefit or personal business purposes.

Any personal or business activities by an employee that may raise concerns along these lines must be reviewed with and approved in advance and in writing by the Compliance Officer.

H. Governance

Westmount is committed to being compliant with applicable laws pertaining to its governance, including, but not limited to, the New York Not-for-Profit Corporation Law, the New York Public Health Law, the rules and regulations of the New York State Department of Health, the Internal Revenue Code and the pertinent regulations of the Internal Revenue Service. Westmount's

governing authority members will to adhere to conduct which is compliant with such laws and regulations. Moreover, Westmount's governing authority members will adhere to and comply with all applicable Westmount policies pertaining to governance, including any conflict of interest policy pertaining to its governing authority members.

I. Credentialing

Professional staff subject to Westmount's credentialing requirements will comply with Westmount's credentialing policies and procedures, including, but not limited to, the timely submission of all documentation, information, waivers and releases required for the credentialing/recredentialing of professional staff members. Professional staff members shall comply with all applicable laws pertaining to the practice of their profession, including, but not limited to, the New York Education Law and the Department of Education's regulations, and will avoid any actions or omissions that would constitute an unacceptable practice under either the New York Education Law or the Department of Education's regulations. Professional staff members will immediately notify Westmount's medical director of any events or circumstances that would adversely impact upon the member's professional privileges or professional practice, including, but not limited to, the initiation of any professional disciplinary action by, as the case may be, the Office of Professional Medical Conduct or the New York Education Department.

EDUCATION AND TRAINING

To ensure that all employees, professional staff members, executives and governing authority members are familiar with their responsibilities under Westmount's Compliance Program, Westmount will implement an ongoing educational and training program. All employees, professional staff members, executives and governing authority members will be required to participate in initial and annual training sessions. Additionally, periodic training sessions will be required, as determined by the Compliance Committee, for employees of certain departments with responsibilities for purchasing, billing and coding or any other responsibilities that the Compliance Committee determines appropriate for periodic training.

A. Initial and Annual Training

Initial and annual training sessions will focus on the requirements of Westmount's Compliance Program as set forth in this Manual and the legal and ethical standards generally required of all employees, professional staff members, executives and governing authority members. Each employee, professional staff members, executives and governing authority members will be required to sign a certification acknowledging attendance at the initial and each annual Compliance Training Session which certification will be maintained by the Compliance Officer, with a copy maintained in the employee's personnel file, and as to employees, a copy being maintained in the employee’s personnel file.

B. Periodic Training

Periodic Training Sessions will highlight federal and state laws that affect the employees' area of responsibility. For example, periodic training will be held in areas involving: federal and state anti-kickback statutes; current billing requirements; and current coding requirements. Employees required to attend periodic training sessions will be required to sign a certification of attendance which will be maintained by the Compliance Officer, with a copy to be maintained in the employee's personnel file.

C. Failure to Attend Required Training

Any employee, or professional staff member or executive who fails to attend a training session for which the employee, or professional staff member or executive is required to attend, will result in disciplinary action. Repeated failures to attend required training sessions will result in termination of employment and/or loss of professional privileges.

D. Ongoing Communication and Changes in Compliance Manual

The Compliance Officer will distribute in writing and/or post in conspicuous places, any modifications of or amendments to the Compliance Manual. The Compliance Officer will also

provide employees, professional staff members, executives and governing authority members with written explanations of any substantial changes in the Compliance Manual or, if the Compliance Officer determines that written materials are insufficient, interim training sessions will be conducted.

Employees, professional staff, executives and governing authority members will be provided periodic information about Westmount's Compliance Program, changes in applicable laws or ethical standards that may affect their respective responsibilities through written memoranda, newsletters, periodic training sessions or other appropriate forms of communication.

REPORTING REQUIREMENTS

A. Reporting

It is the responsibility of every employee, professional staff members, executives and governing authority members to report any known instances of or reasonable suspicions of any violation of applicable state or federal law, ethical standards or Westmount's policies, including the code of conduct and standards of conduct contained in this Manual. To report a suspected violation, an individual is required to notify, either verbally or in writing, the Compliance Officer or the individual's immediate supervisor, if an employee or professional staff member. Any supervisory staff personnel receiving a report of a suspected violation is required to immediately notify the Compliance Officer. If the suspected violation involves the employee's immediate supervisor, the employee should make the report directly to the Compliance Officer. If the suspected violation involves the Compliance Officer, the report should be made directly to Westmount's administrator or a member of the Compliance Committee. An individual may make a report of a suspected violation anonymously. Failure to report a suspected violation may result in disciplinary action.

B. Examples of Activities to be Reported

The following list of activities that should be reported is not an all-inclusive list but is designed to illustrate the types of conduct that should be reported:

(1) the acquisition of any information that gives an individual reason to believe that an employee, professional staff member or contractor is engaged in or plans to engage in any conduct prohibited by applicable law, ethical standards or the policies of Westmount, including the Standards of Conduct contained herein (hereinafter collectively "Standards");

(2) the acquisition of any information indicating that any other person or entity associated with Westmount plans to violate any of the foregoing Standards; and

(3) an employee is instructed, directed or requested to engage in conduct which violates any of the foregoing Standards.

C. Confidentiality

To the extent permissible, Westmount shall treat all reports of suspected violations of Standards as confidential. However, it must be recognized that under certain circumstances the name of the individual making the report will be communicated to the Compliance Officer, if the report is made originally to the employee's supervisor, to an individual responsible for conducting an investigation of the suspected violation or to a governmental agency investigating any such suspected violation. Any such disclosure will only be made on a bona fide need to know basis.

D. Investigations

It is important to the integrity of Westmount's operation that all suspected violations of Standards be thoroughly reviewed and investigated so that appropriate action can be taken as necessary. Westmount will promptly and thoroughly investigate any suspected violation and take appropriate disciplinary action if warranted. Investigations may be conducted internally by the Compliance Officer or externally by either accountants or lawyers engaged by Westmount. Employees, professional staff members, executives and governing authority members are required to cooperate with the individual or individuals conducting an investigation of a suspected violation. Such cooperation may involve being interviewed by the individual or individuals conducting the investigation or supplying such individual or individuals with requested documentation. Failure to cooperate in an investigation of a suspected violation may result in disciplinary action being taken.

E. Non-Retaliation

To ensure employee cooperation, neither Westmount nor its respective employees, professional staff members, executives and governing authority members shall take any retaliatory action or retribution against any employee who has submitted a report of a suspected violation or who has participated in an investigation of a suspected violation. Any employee, professional staff members, executives and governing authority members who takes retaliatory action or retribution against another employee who has either reported a suspected violation or participated in an investigation of a suspected violation will be subject to disciplinary action.

DISCIPLINARY PROCEDURES

All employees, professional staff members, executives and governing authority members are required to comply with applicable state and federal law, ethical standards and Westmount's policies, including the standards of conduct contained in this Manual (hereinafter collectively "Standards"). Any employee or professional staff member or executive who violates any of the foregoing Standards will be subject to disciplinary action, up to and including termination of employment or termination of professional staff privileges.

Disciplinary action will be taken against an employee or professional staff member who:

A. Authorizes or participates directly in a violation of a Standard;

B. Deliberately fails to report a violation of a Standard;

C. Deliberately withholds relevant and material information concerning a violation of a Standard;

D. Deliberately fails to cooperate in an investigation of a suspected violation of a Standard;

E. Retaliates or seeks or causes retribution against any individual or professional staff member who has either reported a suspected violation of a Standard or participated in an investigation of a suspected violation of a Standard;

F. Encourages, directs, facilitates or permits either actively or passively non-compliant behavior; and

G. Fails to participate in required training programs.

Disciplinary action may also be taken against any supervisory personnel who direct or approve an employee's actions which result in a violation of a Standard, is aware that an employee's actions which violate a Standard but fails to take appropriate corrective action or who otherwise fails to exercise appropriate supervision.

Disciplinary action may include oral or written warning, probation, suspension, demotion, termination from employment or suspension or termination of staff privileges. Disciplinary action will be taken in accordance with Westmount's personnel policies and procedures. Disciplinary action will be taken on a fair, equitable and consistent basis. Disciplinary action will be appropriate to the level of the employee's culpable conduct, that is, the more serious the level of culpable conduct (intentional conduct or reckless non-compliance) will result in more significant disciplinary action. Notwithstanding the foregoing, this statement is not a guaranty of progressive discipline and Westmount reserves the right to terminate an employee at any time for any lawful reason.

MONITORING AND AUDITING

Westmount will have in place a system for routinely identifying compliance risk areas and for self evaluation including internal and external audits as needed. It is intended that this process will result in continuous improvement in professional, business and operational practices of Westmount.

The Centers for Medicare and Medicaid Services, the Office of the Inspector of General, the New York State Department of Health and the New York State Office of the Medicaid Inspector General, have made information on the Medicare and Medicaid programs available on their respective websites and Facility will utilize such resources in operating its compliance program and continuing to monitor the progress of its compliance program.

Employees, professional staff members executives, governing authority members, and, to the extent applicable, vendors and agents will be required to cooperate with the compliance responsibilities and activities of Facility.

SUBPOENAS AND SEARCH WARRANTS

There may come a time during your employment at Westmount when you are served with either a subpoena or a search warrant. It is important for you to understand what you should do if you are ever served with a subpoena or a search warrant.

A. <u>Subpoenas.</u> There are two types of subpoena. A general subpoena or a judicial subpoena requires an individual to appear and to testify at a given time and place. A subpoena duces tecum requires the production of documents and records at a given time and place and may also require the individual served with the subpoena to testify as to the documents and records to be produced.

Subpoenas may be issued in both civil proceedings and criminal proceedings. Subpoenas may be issued by a court, a clerk of the court, an attorney representing a party in an action, an administrative agency in connection with an administrative proceeding or investigation or a grand jury. Subpoenas typically provide a time period of several days to several weeks before a person is required to testify or produce documents and records. Generally, a failure to comply with a subpoena is enforceable in New York by a contempt proceeding. However, not all subpoenas are required to be complied with and an individual or entity served with a subpoena has the right to go to court to ask the court to withdraw the subpoena. Reasons that a subpoena may be withdrawn include but may not be limited to the confidential nature of the materials requested or that the scope of the subpoena is overly broad and burdensome, unreasonable or oppressive.

If you are served with a subpoena, you should undertake the following actions:

1. Document the time and date of service of the subpoena upon you, by whom the subpoena was served, the time, place and date that either testimony is to be given or documents and records are to be produced, the identity of the court, governmental agency or other entity who has issued the subpoena;

2. Immediately notify your supervisor and the compliance officer of the fact that you have been served with a subpoena and provide each with a copy of the subpoena; and

3. Await further instructions from the compliance officer as to what steps, if any, you will be required to undertake in connection with complying with the subpoena.

The compliance officer, upon receipt of a subpoena, will immediately contact Westmount's attorney to advise Westmount's attorney of the fact that a subpoena has been served and provide the attorney with the following information:

1. The date and time the subpoena was served and upon whom the subpoena was served;

2. The court, governmental agency or individual who issued the subpoena;

3. The scope and nature of the information requested by the subpoena;

4. The time, date and place where either testimony or the production of documents and records is to take place;

5. The level of effort required to comply with the subpoena.

The compliance officer will advise you as to what actions will be taken to comply with the subpoena or whether Westmount's legal counsel will seek to ask a court to withdraw the subpoena. If you are required to give testimony in compliance with the subpoena, you have the right to have an attorney present during your testimony. Depending upon the circumstances, Westmount may provide an attorney to accompany you during your testimony.

It should be kept in mind that the service of a subpoena by a governmental agency may be the prelude to a broader investigation and that you may be contacted either at Westmount or at home by the government investigator. Should you be contacted by a governmental investigator, you should be aware that you have the right to either talk to the investigator or not talk to the investigator, you have the right to consult with an attorney before answering any questions and to have an attorney present during any interview. Should you agree to an interview, it is of critical importance that you tell the truth.

When served with a subpoena that effects Westmount's business or operations, you should not discuss the subpoena, its contents or the nature of any materials or documents required to be produced pursuant to the subpoena with the press.

B. <u>Search Warrants.</u> A search warrant is a written court order entitling a law enforcement officer to search a specified place and take specified documents. A search warrant must be signed by a judge or a magistrate, it must be directed to a named law enforcement officer and direct him or her to search the specified place and it must describe the materials to be taken.

A search warrant is different from a subpoena in that there is no advance notice. The search and the taking of documents will occur at the time the search warrant is served upon you.

The service of a search warrant generally infers that an investigation is taking place which is serious in nature. In this regard, if you are served with a search warrant, you should take the following steps immediately:

1. Locate the person in charge of executing the warrant and ask to see his or her identification;

2. Ask for a copy of the search warrant and a copy of any affidavit submitted to the Court or magistrate to obtain the warrant and read the warrant and affidavit carefully;

3. Immediately contact the compliance officer or in the absence of the compliance officer, the administrator and in the absence of the compliance officer and the administrator, your immediate supervisor and provide them with the copy of the warrant and the affidavit. These individuals will be responsible for contacting Westmount's legal counsel to advise counsel of service of the search warrant.

The compliance officer, Westmount's administrator or your supervisor will be responsible for monitoring the search. However, you may be asked questions by the individuals conducting the search. If you are asked any questions, you should be aware that you have the right to either talk to or not talk to these individuals, consult with counsel before deciding to talk to these individuals and have counsel present at any interview if you so choose. If you do speak with the investigators, it is critical to remember that you should be truthful at all times.

Under no circumstances is an employee of Westmount to interfere with a search conducted pursuant to a search warrant. Moreover, employees should not discuss the search warrant or any related events with the press.

When a search is being conducted pursuant to a search warrant, one employee of Westmount will be designated to deal with the individuals conducting the search. This will generally be the compliance officer, unless the compliance officer is absent in which event it will be the compliance officer's designee or Westmount's administrator. In dealing with the search, this individual should:

1. Monitor the search but not interfere with it;

2. Be businesslike and courteous but no volunteer information before consulting with counsel;

3. Take careful notes of the type and location of the materials taken, including any documents, computer records, physical items, photographs, videotapes and audio-recordings;

4. If documents taken are considered privileged, advise the individual of the privileged nature of the documents and request that such documents be sealed in an envelope and segregated from other items taken;

5. Obtain a detailed receipt for all documents and other materials taken; and

6. Ask for an opportunity to copy all documents or records taken.

FEDERAL FALSE CLAIMS ACT

A. False Claims and Penalties

The Federal False Claims Act ("Act") imposes civil liability upon any person (individual or entity) for knowingly making a false claim to the United States government ("Government"). Specifically, the Act sets forth seven circumstances for which civil liability will be imposed for false claims. These seven circumstances are:

1. To knowingly present, or cause to be presented, to the Government a false or fraudulent claim for payment or approval;
2. To knowingly make, use, or cause to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government;
3. To conspire to defraud the Government by getting a false or fraudulent claim allowed or paid;
4. To have possession, custody or control of property or money used, or to be used, by the Government and, intending to defraud the Government or to willfully conceal the property, to deliver or cause to be delivered, less property than the amount for which the person receives a certificate or receipt;
5. To authorize the making or delivery of a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, to make or deliver the receipt without completely knowing that the information on the receipt is true;
6. To knowingly buy, or receive as a pledge of an obligation or debt, public property from an officer or employee of the Government who lawfully may not sell or pledge the property; or

7. To knowingly make, use, or cause to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government.

The civil monetary penalty that can be imposed for a false claim under the Act is not less than $5,000.00 and not more than $10,000.00, **PLUS** three times the amount of damages which the Government sustained because of the false claim. A Court may impose a lesser penalty of not less than two times the amount of damages sustained by the Government where the Court finds the following:

1. The person committing the violation furnished governmental officials responsible for investigating false claims with all information known to the person about the violation within thirty (30) days after the date on which the person first obtained the information;
2. The person fully cooperated with any governmental investigation of the violation; and
3. At the time the person furnished the Government with the information about the violation, no criminal prosecution, civil action, or administrative action had been commenced with respect to the violation and the person did not have actual knowledge of the existence of an investigation into the violation.

The Act defines the term "Claim" and the terms "Knowing" and "Knowingly". A Claim is defined for purposes of the Act as follows:

> Claim includes any request or demand, whether under a contract or otherwise, for money or property which is made to a contractor, grantee, or other recipient if the United States government provides any portion of the money or property which is requested or demanded or if the Government will reimburse such contractor, grantee or other recipient of any portion of the money or property which is requested or demanded.

The terms "Knowing" and "Knowingly" are defined as:

That a person, with respect to information:

1. has actual knowledge of the information;

2. acts in deliberate ignorance of the truth or falsity of the information; or

3. acts in reckless disregard of the truth or falsity of the information,

and no proof of specific intent to defraud is required.

In essence, civil monetary penalties may be imposed upon a person for making a false claim to the Government where the individual knows the information in the claim is false, or acts in deliberate ignorance of the truth or falsity of the information in the claim or acts in reckless disregard of the truth or falsity of the information in the claim. Civil monetary penalties are imposed even where there is no specific intent to defraud the Government.

The Act applies to claims submitted under Medicare, Medicaid, other federal health care programs and other state health care programs funded, in whole or in part, by the federal government. Examples of false claims include, but are not limited to:

1. Filing a claim for payment knowing that the services were not provided or were medically unnecessary;
2. Submitting a claim for payment knowing that excessive charges are being billed;
3. Submitting a claim for payment knowing that a higher billing code which does not reflect the services provided is used;
4. Filing a claim knowing that the claim is for duplicate services.

The Act has been used as a basis to impose civil monetary penalties upon nursing homes in situations involving egregious substandard quality of care, that is, the resident's condition is so bad that the

services billed for could not have been provided.

B. Civil Actions Under the Act

Enforcement of the Act is the responsibility of the United States Attorney General. However, private individuals have the ability to bring a civil action for a violation of the Act. These private actions are known as "Qui Tam" actions.

Qui Tam actions are brought by private individuals in the name of the Government. When the complaint in an action brought by a private individual is filed with the Court, it remains under seal for a period of sixty days and cannot to be served upon the defendants named therein until ordered by the Court. Under seal means that the action remains confidential and is not subject to disclosure. The private individual must serve a copy of the complaint and written disclosures of substantially all material evidence and information the individual possesses on the Government. Within sixty days of the Government's receipt of the complaint and written disclosures, the Government shall either intervene and proceed with the action, in which case, the action shall be conducted by the Government, or notify the Court that it declines to take over the action, in which case, the private individual bringing the action shall have the right to proceed with the action.

If the Government elects to proceed with the action brought by a private individual, the private individual shall receive at least 15% but not more than 25% of the proceeds of the action or settlement of the claim, depending upon the extent to which the private individual contributed to the prosecution of the action. If the Government does not proceed with the action, and the private individual is successful in the action or settles the action, the private individual is entitled to an amount not less than 25% and not more than 30% of the proceeds of the action or settlement which shall be paid out of the proceeds of the action or settlement. In addition, the private individual is

entitled to receive an amount for reasonable expenses necessarily incurred in the action plus reasonable attorneys' fees and costs. On the other hand, if the private individual is unsuccessful in prosecuting the action, the Court, upon a finding that the action was clearly frivolous, clearly vexatious or brought primarily for purposes of harassment, may award the defendant in the action its reasonable attorneys' fees and expenses. If the private individual in the action is a person who planned or initiated the violation of the Act, the Court, where appropriate, may reduce the amount of the award to the private individual. Moreover, if such private individual is convicted of a crime arising from his or her role in the violation, the person will not receive any share of the proceeds of the action.

A civil action under the Act may not be brought:

1. More than six years after the date on which the violation of the Act is committed; or
2. More than three years after the date when facts material to the right of action are known or reasonably should have been known by an official of the Government charged with responsibility to act in the circumstances but in no event more than 10 years after the date on which the violation is committed,

whichever occurs last.

31 U.S.C. §3801 Et. Seq.

31 U.S.C. §3801 imposes additional civil penalties for the filing of false claims or statements with the federal government. The term "Claim" is defined as:

> Any request, demand or submission - -
>
> (A) made to [the Government] for property, services or money (including money representing grants, loans, insurance or benefits);

(B) made to a recipient of property, services or money from [the Government] or to a party to a contract with [the Government] - -

(i) for property or services if the United States - -

(I) provided such property or services;

(II) provided any portion of the funds for the purchase of such property or services; or

(III) will reimburse such recipient or party for the purchase of such property or services; or

(ii) for the payment of money (including money representing grants, loans, insurance or benefits), if the United States - -

(I) provided any portion of the money requested or demanded; or

(II) will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(C) made to [the Government] which has the effect of decreasing an obligation to pay or account for property, services or money,

except that such term does not include any claim made in any return of tax imposed by the Internal Revenue Code of 1986.

The term "Statement" is defined as:

Any representation, certification, affirmation, document, record or accounting or bookkeeping entry made - -

(A) with respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(B) with respect to (including relating to eligibility for - -

(i) A contract with, or a bid or proposal for a contract with; or

(ii) A grant, loan or benefit from,

an authority, or any State, political subdivision of a State, or other

party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan or benefit, or if the Government will reimburse such State, political subdivision or party for any portion of the money or property under such contract or for such grant, loan or benefit,

except that such term does not include any statement made in any return of tax imposed by the Internal Revenue Code of 1986.

Specifically, civil monetary penalties under 31 U.S.C. §3801 et. seq. will be imposed against:

1. Any person (individual or entity) who makes, presents, or submits, or causes to be made, presented or submitted, a claim that the person knows or has reason to know:

(A) is false, fictitious or fraudulent;

(B) includes or is supported by any written statement which asserts a material fact which is false, fictitious or fraudulent;

(C) includes or is supported by any written statement that:

(i) omits a material fact;

(ii) is false, fictitious or fraudulent as a result of such omission; and

(iii) is a statement in which the person making, presenting or submitting such statement has a duty to include such material facts; or

(D) Is for payment for the provision of property or services which the person has not provided as claimed; or

2. Any person who makes, presents or submits, or causes to be made, presented or submitted, a written statement that:

(A) The person knows or has reason to know:

(i) asserts a material fact which is false, fictitious or fraudulent; or

(ii) is false, fictitious or fraudulent as a result of such omission;

(B) in the case of a statement described in clause (ii) of subparagraph (A) is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact; and

(C) contains or is accompanied by an express certification or affirmation of the truthfulness or accuracy of the contents of the statement.

The term "knows or has reason to know" means that:

A person, with respect to a claim or statement - -

(A) has actual knowledge that the claim or statement is false, fictitious or fraudulent; or

(B) acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(C) acts in reckless disregard of the truth or falsity of the claim or statement,

and no proof of specific intent to defraud is required.

Civil monetary penalties under 31 U.S.C. §3801 et. seq. are not more than $5,000 for each false claim or statement. Also, in lieu of damages sustained by the federal government, an assessment of not more than twice the amount of such claim(s) may be imposed. An individual or entity against whom civil monetary penalties are sought under 31 U.S.C. §3801 et. seq. is entitled to notice, an opportunity for a hearing and judicial review.

ADDITIONAL CIVIL AND CRIMINAL PENALTIES AND EXCLUSIONS FOR FALSE CLAIMS

In addition to the Act and 31 U.S.C. §3801 et. seq., the federal government may, pursuant to 42 U.S.C. §1320a-7a, impose civil monetary penalties for false claims. Such additional civil

monetary penalties may be up to but not exceed $10,000 for each item or service which is the subject of a false claim.

In addition to civil monetary penalties, the federal government may, pursuant to 42 U.S.C. §1320a-7, exclude an individual or entity from participation in federal and state health care programs (including Medicare and Medicaid) for certain false claims or actions. Generally, exclusion is mandatory in cases where the individual is convicted of a felony relating to health care fraud, otherwise, exclusion is permissive, that is, subject to the discretion of the Government.

Pursuant to 42 U.S.C. §1320a-7b, criminal sanctions may be imposed against an individual or entity for making or causing to be made false statements or representations. Specifically, criminal sanctions will be imposed against an individual or entity who:

1. Knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any application for any benefit or payment under a federal health care program;
2. At any time knowingly and willfully makes or causes to be made any false statement or representation of a material fact for use in determining rights to such benefits or payments;
3. Having knowledge of the occurrence of any event affecting (1) his/her initial or continued right to any such benefit, or (2) the initial or continued right to any such benefit or payment of any other individual in whose behalf he/she has applied for or is receiving such benefit or payment, conceals or fails to disclose such event with an intent fraudulently to secure such benefit or payment either in a greater amount or quantity than is due or when no such benefit or payment is authorized;
4. Having made application to receive any such benefit or payment for the use and benefit of

another and having received it, knowingly and willfully converts such benefit or payment or any part thereof to a use other than for the use and benefit of such other person;

5. Presents or causes to be presented a claim for a physician's service for which payment may be made under a federal health care program and knows that the individual who furnishes the services was not licensed as a physician; or

6. For a fee knowingly and willfully counsels or assistants an individual to dispose of assets (including by any transfer in trust) in order for the individual to become eligible for medical assistance under [Medicaid] if disposing of the assets results in the imposition of a period of ineligibility for such assistance.

In addition, criminal sanctions will be imposed against any individual or entity who knowingly and willfully makes or causes to be made, or induces or seeks to induce the making of, any false statement or representation of a material fact with respect to the conditions or operations of any institution, facility or entity in order that such institution, facility or entity may qualify (either upon initial certification or upon recertification) as a hospital, critical access hospital, skilled nursing facility, nursing facility, intermediate care facility for the mentally retarded, home health agency, or other entity for which certification is required under Medicare or a state health care program or with respect to information required to be provided under 42 U.S.C. §1320a-3a (disclosure requirements for other providers under Medicare Part B).

NEW YORK STATE FALSE CLAIMS LAWS

A. NY False Claims Act (State Finance Law §§187-194)

The NY False Claims Act closely tracts the federal False Claims Act. 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 allows private individuals to file lawsuits in state court, just as if they were state or local government parties. If the suit eventually concludes with payments back to the government, the person who started the case can recover 25-30% of the proceeds if the government did not participate in the suit or 15-25% if the government did participate in the suit.

B. Social Services Law, Section 366-b

Section 366-b of the Social Services Law makes it a Class A misdemeanor for any person who, with intent to defraud, does any of the following:

1. presents for allowance or payment any false or fraudulent claim for furnishing services or merchandise;
2. knowingly submits false information for the purpose of obtaining greater compensation than that to which he/she is legally entitled for furnishing services or merchandise; or
3. knowingly submits false information for the purpose of obtaining authorization for furnishing services or merchandise under the Medicaid program.

C. Article 177 of the Penal Law

Article 177 of the Penal Law became effective November 1, 2006. Article 177 of the Penal Law establishes the crime of health care fraud. The crime of health care fraud in the fifth degree is a Class A misdemeanor and a person is guilty of this crime when:

> With intent to defraud a health plan, [includes the State Medicaid program], he or she knowingly and willfully provides materially false information or omits material information for the purpose of requesting payment from a health plan for a health care item or service and, as a result of such information or omission, he or she or another person receives payment in an amount that he, she or such other person is not entitled to under the circumstances.

Health care fraud in the fourth degree is a Class E felony. A person is guilty of health care fraud in the fourth degree when the person commits the crime of health care fraud in the fifth degree on one or more occasions and the payment or portion of payment wrongfully received from a single health plan [including Medicaid] in a period of not more than one year, exceeds $3,000 in the aggregate.

Health care fraud in the third degree is a Class D felony. Health care fraud in the third degree is committed where the wrongful payments exceed $10,000 in the aggregate in a one-year period. Health care fraud in the second degree is a Class C felony and is committed where the wrongful payments exceed $50,000 in the aggregate in a one-year period. Health care fraud in the first degree is a Class B felony and is committed where the wrongful payments exceed more than $1,000,000 in the aggregate one year period.

Article 177 of the Penal Law provides for an affirmative defense for individuals serving as a clerk, bookkeeper, or other employee of a health care provider who, without personal benefit, was merely executing the orders of his or her employer or a superior employee generally authorized to direct his or her activities. The affirmative defense is not available to any employee charged with the active management and control, in an executive capacity, of the affairs of the corporation.

D. <u>Social Services Law §145-b, False Statements</u>

It is a violation to knowingly obtain or attempt to obtain payment for items or services furnished under any Social Services program, including Medicaid, by use of a false statement, deliberate concealment or other fraudulent scheme or device. The State or the local Social Services district may recover three times the amount incorrectly paid. In addition, the Department of Health may impose a civil penalty of up to $2,000 per violation. If repeat violations occur within 5 years, a penalty up to $7,500 per violation may be imposed if they involve more serious violations of Medicaid rules, billing for services not rendered or providing excessive services.

E. Social Services Law §145-c, Sanctions

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, the person's family's needs are not taken into account for 6 months if a first offense, 12 months if a second (or once if benefits received are over $3,900) and five years for 4 or more offenses.

F. 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.

G. 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.

H. Penal Law Article 175, False Written Statements

Four crimes are set forth relating to filing false information or claims and have been applied in Medicaid fraud cases:

a. §175.05, falsifying business records, involves entering false information, omitting material information or altering an entity's business records with the intent to defraud. It is a Class A misdemeanor.

b. §175.10, falsifying business records in the first degree includes the elements of the §175.05 offense and includes the intent to commit another crime or conceal its commission. It is a Class E felony.

c. §175.30, offering a false instrument for filing in the second degree involves presenting a written instrument (including a claim for payment) to a public office knowing that it contains false information. It is a Class A misdemeanor.

d. §175.35, offering a false instrument for filing in the first degree includes the elements of the second degree offense and must include an intent to defraud the state or a political subdivision. It is a Class E felony.

I. Penal Law Article 176, Insurance Fraud

Applies to claims for insurance payment, including Medicaid or other health insurance and contains six crimes:

a. Insurance fraud in the 5th degree involves intentionally filing a health insurance claim knowing that it is false. It is a Class A misdemeanor.

b. Insurance fraud in the 4th degree is filing a false insurance claim for over $1,000. It is a Class E felony.

c. Insurance fraud in the 3rd degree is filing a false insurance claim for over $3,000. It is a Class D felony.

d. Insurance fraud in the 2nd degree is filing a false insurance claim for over $50,000. It is a Class C felony.

e. Insurance fraud in the 1st degree is filing a false insurance claim for over $1 million. It is a Class B felony.

f. Aggravated insurance fraud is committing insurance fraud more than once. It is a Class D felony.

J. 18 NYCRR Section 515.2

It is an unacceptable practice under the Medicaid program for an individual or entity to submit false claims or false statements to Medicaid. False claims include:

1. Submitting, or causing to be submitted, a claim or claims for:
   - (i) unfurnished medical care, services or supplies;
   - (ii) an amount in excess of established rates or fees;
   - (iii) medical care, services or supplies provided at a frequency or in amount not medically necessary; or
   - (iv) amount substantially in excess of the customary charges or costs to the general public; or
2. Inducing, or seeking to induce, any person to submit a false claim.

False statements are:

1. Making, or causing to be made, any false, fictitious or fraudulent statement or misrepresentation of material fact in claiming a medical assistance payment, or for use in determining the right to payment; or
2. Inducing or seeking to induce the making of any false, fictitious or fraudulent statement or misrepresentation of a material fact.

Individuals who have engaged in unacceptable practices under the Medicaid program are subject to one or more of the following sanctions:

1. Exclusion from the program for a reasonable time;
2. Censure;

3. Conditional or limited participation, such as requiring pre-audit or prior authorization of claims for all medical care, services or supplies, prior authorization of specific medical care, services or supplies, or other similar conditions or limitations.

In addition, the Department of Health may require the repayment of overpayments determined to have been made as a result of the unacceptable practice.

WHISTLEBLOWER PROTECTION

A. Federal False Claims Act

No employee because of lawful acts done by the employee in furtherance of a civil action under the Act, whether brought by the Government or a private individual, including investigation for, initiation of, testimony for, or assistance in any such action maybe discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of such actions. Any employee who has been discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against in the terms and conditions of employment because of such lawful acts shall be entitled relief necessary to make the employee whole, including, reinstatement with the same seniority status such employee would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

B. State Laws

Article 20-C of the New York Labor Law prohibits retaliatory action by employers. Section 740 of Article 20-C applies to all employers. Section 741 of Article 20-C applies to health care employers, including, but not limited to, providers licensed under Article 28 (i.e., hospitals, nursing

homes and diagnostic and treatment centers) and Article 36 (i.e., long term home health care programs, certified home health care agencies, and licensed home care service agencies) of the Public Health Law. In addition, the New York False Claim Act provides additional protection to employees.

I. Section 740

Under Section 740 an employer is prohibited from taking any retaliatory personnel action (discharge, suspension, demotion or other adverse employment action taken against an employee in terms and conditions of employment) against an employee because the employee does any of the following:

(i) discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer that is in violation of law, rule or regulation which violation creates and presents a substantial and specific danger to the public health or safety or which constitutes health care fraud;

(ii) provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any such violation of a law, rule or regulation by the employer; or

(iii) objects to, or refuses to participate in any such activity, policy or practice in violation of a law, rule or regulation.

With respect to disclosures to a public body only, protection against retaliatory personnel actions is unavailable unless the employee has first brought the activity, policy or practice in violation of law, rule or regulation, to the attention of a supervisor of the employer and afforded the employer a reasonable opportunity to correct the activity, policy or practice.

An employee who has been subject to a retaliatory personnel action may institute a civil action for the following relief within one year after the alleged retaliatory personnel action was taken:

(i) An injunction to restrain continued violation of Section 740;

(ii) Reinstatement of the employee to the same position held before the retaliatory personnel action, or to an equivalent position;

(iii) Reinstatement of full fringe benefits and seniority rights;

(iv) Compensation for lost wages, benefits and other remuneration; and

(v) Payment by the employer of reasonable costs, disbursements and attorneys' fees.

If the Court determines that a civil action under Section 740 was without basis in law or fact, the Court, in its discretion, may award reasonable attorneys' fees and court costs and disbursements to the employer.

II. Section 741

Under Section 741, an employer is prohibited from taking retaliatory action (discharge, suspension, demotion, penalization or discrimination against an employee, or other adverse employment action taken against an employee in terms and conditions of employment) against an employee because the employee does any of the following:

(i) discloses or threatens to disclose to a supervisor, or to a public body an activity, policy or practice of the employer or agent that the employee, in good faith, reasonable believes constitutes improper quality of patient care ("improper quality of patient care" means any practice, procedure, action or

failure to act of an employer which violates any law, rule, regulation or declaratory ruling adopted pursuant to law, where such violation relates to matters which may present a substantial and specific danger to public health or safety or a significant threat to the health of a specific patient); or

(ii) objects to, or refuses to participate in any activity, policy or practice of the employer or agent that the employee, in good faith, reasonably believes constitutes improper quality of patient care.

The protections under Section 741 are not available to an employee unless the employee has brought the improper quality of patient care to the attention of a supervisor and has afforded the employer a reasonable opportunity to correct such activity, policy or practice. However, the inapplicability of Section 741 for failure to provide an employer an opportunity to correct does not apply to disclosures or threatened disclosures to a supervisor or public body where the improper quality of patient care presents an imminent threat to public health or safety or to the health of a specific patient and the employee reasonably believes in good faith that reporting to a supervisor would not result in corrective action.

An employee may bring a civil action under Section 740 for the relief identified in Section 740. However, instead of the one-year period in which to bring such action, a health care employee may bring such action within two years after the alleged retaliatory personnel action was taken. In addition to the specific relief identified in Section 740, if the Court determines that a health care employer acted in bad faith in a retaliatory action under Section 741, the Court may assess a civil penalty of an amount not to exceed $10,000 against the health care employer which is to be paid to the Improving Quality of Patient Care Fund

established under the State Finance Law.

III. NY False Claim Act (State Finance Law §191)

The False Claim Act also provides protection to *qui tam* relators who are discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of their employment as a result of their furtherance of an action under the Act. Remedies include reinstatement with comparable seniority as the qui tam relator would have had but for the discrimination, two times the amount of any back pay, interest on any back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

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EMPLOYEE/PROFESSIONAL STAFF MEMBER COMPLIANCE CERTIFICATION

I certify that I have received the Compliance Manual and that Westmount's Compliance Program has been explained to me. I promise to comply with the terms of Westmount's Compliance Program and I understand that violation of these terms may lead to disciplinary action, up to and including the termination of my employment or the termination or non-renewal of staff privileges.

Signature: _____

Name: _____
(Print Name)

Date: _____