



# Corporate Compliance And False Claims Policy

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## CORPORATE COMPLIANCE AND FALSE CLAIMS POLICY

It is our policy to be in compliance with all Federal and State rules, laws and regulations, including applicable Medicaid regulations and policies. The Consumer Directed Personal Assistance Program (“CDPAP”) is administered pursuant to the Fiscal Intermediary’s Corporate Compliance Program. The following outlines specific provisions of the Compliance Program applicable to CDPAP consumers and personal assistants (“PAs”).

### A. CDPAP Compliance Issues

Consumers and PAs must accurately record and report time for all CDPAP services rendered. The submission of inaccurate timesheets to the fiscal intermediary will cause the fiscal intermediary to submit false claims to the Medicaid program, including managed care organizations, and result in overpayment liability. The intentional falsification of timesheets or other business records relating to the CDPAP program may constitute criminal conduct and result in civil and criminal prosecution. The fiscal intermediary monitors timesheets submitted for CDPAP and will investigate any abnormalities. Referrals to the appropriate legal authorities will be made in circumstances where the fiscal intermediary discovers intentional criminal conduct or civil malfeasance.

### B. PA Expectations

As part of this compliance program, all consumers and PAs are urged to raise any concerns about the accuracy or propriety of any documentation or billing practice or any other compliance issue without concern for retaliation. Any direction from a consumer to inaccurately report, or falsify, timesheets or other business records should be immediately reported. Similarly, any direction from a PA to a consumer to inaccurately report, or to falsify, timesheets or other business records should be immediately reported.

### C. Applicable Laws

Specific laws implicated by CDPAP include:

#### 1) Fraud and Abuse

Consumers and PAs shall refrain from conduct which may violate the fraud and abuse laws. These laws prohibit (1) direct, indirect or disguised payments in exchange for the referral of patients; (2) the submission (or causing submission) of false, fraudulent or misleading claims to any government entity or third party payer, including claims for services not rendered, claims which characterize the service differently than the service actually rendered or claims which do not otherwise comply with applicable program or contractual requirements; and (3) making false representations to any person or entity in order to gain or retain participation in a program or to obtain payment or excessive payment for any service.

#### 2) False Claims Act

The Federal False Claims Act is a law that prohibits a person or entity, such as the fiscal intermediary from “knowingly” presenting or causing to be presented a false or fraudulent claim for payment or approval to the Federal Government and from “knowingly” making, using or causing to be made a false record or statement to get a false or fraudulent claim paid or approved by the Federal Government. These prohibitions extend to claims submitted to federal health care programs, such as Medicaid. The terms “knowing” and “knowingly” is having knowledge of the information and acts in reckless disregard of the truth or falsity of the information.

A person or entity found guilty of violation can be obligated to civil penalty up to \$11,000 plus three times the amount of actual damages. A person or entity can also find themselves excluded from the Medicaid Programs if found in violation.

Note: A private person who brings civil actions for violations to the False Claims Act is entitled to receive percentages of monies obtained through settlements and is protected by the Non-Retaliation and Non-Retribution for Reporting Policy of the Compliance Program.

New York State False Claims Act makes it unlawful to knowingly make a false statement or representation (or deliberate concealment of any material fact or other fraudulent scheme or device) to attempt to obtain Medicaid payments for services or supplies furnished under the New York State Medical Assistance Program. A violation of this Act can result in civil damages three times overstated amount of \$5,000 whichever is greater. The fiscal intermediary or the individual may also be required to pay civil monetary penalty to the Medicaid program if it was known that the services or supplies were not medically necessary, not provided as claimed, if the person requesting such was excluded from the program or the services or supplies for which payment was received but not provided.

New York State may also impose the threat of criminal prosecution who had the intent to defraud the State program a Class A misdemeanor punished in accordance with the penalties fixed by such law.

#### **D. Non-Retaliation and Non-Retribution for Reporting**

PAs and consumers who wish to report concerns of potential violations of this policy or the law may do so through the Compliance Line, or directly to the Compliance Officer. We have a non-retaliation/non-retribution policy. The fiscal intermediary managers and supervisors are not permitted to engage in retaliation, retribution or any form of harassment directed against a PA or a consumer who reports a Compliance concern.

Any fiscal intermediary employee who engages in retribution, retaliation or harassment against a reporting consumer or PA is subject to discipline up to and including dismissal.

Neither consumers nor PAs should not be apprehensive about reporting Compliance

concerns.

### **E. Corporate Compliance Program Operation**

Consumers and PAs may confidentially report concerns through our compliance line at 716.557.1100 Ext 8, [compliance@committedhc.com](mailto:compliance@committedhc.com), or anonymously at 716.351.4700.

Alternately, consumers and PAs may reach our Compliance Officer, Rachel Werzberger directly by phone at 716.557.1126 via e-mail at [rwerzberger@committedhc.com](mailto:rwerzberger@committedhc.com).

PAs and consumers may also request and obtain additional information on the Corporate Compliance Program, or ask any questions of the Compliance Officer, at any time.

## NEW YORK PAID FAMILY LEAVE POLICY

This policy describes the Consumer's New York Paid Family Leave Policy. You may qualify for benefits under this policy. Speak with Your Consumer regarding Paid Family Leave Benefits ("PFL"). The Fiscal Intermediary will process all payments for any PFL provided by Your Consumer.

### ELIGIBILITY

To qualify for NYPFL, (a) a New York employee whose regular schedule is 20 or more hours per week must have worked for an employer for at least 26 consecutive weeks preceding the first full day leave begins, or (b) a New York employee whose regular schedule is less than 20 hours per week must have worked in an employer's employment for 175 days. Non-New York employees are not eligible for NYPFL.

### BASIC LEAVE ENTITLEMENT

Eligible New York employees may take up to the following amounts of NYPFL, for the reasons listed below, in a 52 consecutive week period (measured backward from the date you use any NYPFL):

- Starting January 1, 2018: 8 weeks of leave;
- Starting January 1, 2019: 10 weeks of leave; and
- Starting January 1, 2021: 12 weeks of leave.

NYPFL may be taken for the following reasons:

- To care for a spouse, domestic partner, child, parent (including in-laws), grandparent, or grandchild with serious health condition (as defined under the NYPFL Law);
- To bond with a child after the child's birth or placement for adoption or foster care or to meet adoption or foster care obligations (leave to be completed within one year of the child's birth or placement); or
- To meet qualifying exigencies (as defined under the NYPFL Law) arising from the fact that an employee's spouse, domestic partner, child, or parent is on active duty or has been notified of an impending call to active duty in the U.S. Armed Forces.

Note that NYPFL is not available for the employee's own serious health condition. Also note that disability benefits and NYPFL leave may not be used at the same time. An employee will not be entitled to paid family leave if he or she received more than 26 weeks of NYPFL leave and disability benefits during any 52 consecutive calendar week period.

During NYPFL leave, paid benefits will be provided by the Fiscal Intermediary's

NYPFL insurance carrier, at the levels established by law, which are expected to be as follows:

- Starting January 1, 2019: 55% of the employee's AWW, up to 55% of the then-current NYS AWW;
- Starting January 1, 2020: 60% of the employee's AWW, up to 60% of the then-current NYS AWW; and
- Starting January 1, 2021: 67% of the employee's AWW, up to 67% of the then-current NYS AWW.
- The NYS Average Weekly Wage is the average weekly wage paid across New York State during the previous calendar year and is determined and published by the New York State Department of Labor each year.

Pay under NYPFL is available from the first day of the leave (no waiting period). The insurance carrier, not the Consumer, is responsible for approving and paying benefits under the NYPFL Law. To receive such benefits, you will be required to file a claim with the carrier and to follow the carrier's requirements with respect to claim filing, certification, and supporting documentation (see NYPFL Claim section below).

## **INTERMITTENT AND REDUCED SCHEDULE LEAVE**

Eligible employees may take NYPFL intermittently in no less than daily increments. The maximum number of days of NYPFL available to an employee is calculated based on the average number of days the employee works per week. For example, an employee with a schedule of 5 or more days per week can take up to the then-applicable maximum weeks of leave multiplied by 5 days (in 2018, the maximum is 8 weeks, so the employee would be eligible for up to 40 days of leave in a 52-week period). An employee who works 3 days per week (60% of the work week) can receive only 60% of the then-applicable maximum leave (in 2018, this would be 60% of 40 days, so the employee would be eligible for up to 24 days of leave in a 52-week period).

## **NYPFL CONTRIBUTIONS AND WAIVERS**

Consistent with the NYPFL Law, the Fiscal Intermediary will fund the NYPFL insurance policy through deductions from the paychecks of employees who have not filed valid waivers in accordance with this policy and the NYPFL Law. The Fiscal Intermediary will make the maximum deductions permitted by law.

Employees whose regular schedule is 20 or more hours per week but who will not work 26 consecutive weeks, and employees whose regular schedule is less than 20 hours per week but who will not work 175 days in a 52 consecutive-week period may file a waiver of NYPFL benefits. Upon filing a waiver, the employee will be exempt from making contributions to NYPFL and thus will not be subject to payroll deductions. However, the employee will be ineligible for NYPFL benefits.

If the work schedule of an employee who has filed a waiver changes so that he or

she will work 26 consecutive weeks, or 175 days in a 52 consecutive-week period (as applicable), the waiver will be automatically revoked within 8 weeks of the change. The employee will then be obligated to make contributions, including any retroactive contributions due from date of the waiver.

## REQUESTING NYPFL AND EMPLOYEE NOTICE OBLIGATIONS

To take NYPFL leave, an employee must provide the Consumer with advance notice of the need for leave as follows:

- **Foreseeable Leave.** Where the need for leave is foreseeable (e.g., planned medical treatment, expected birth or placement of a child, planned medical treatment for a serious injury or illness of a family member, etc.), an employee must provide at least 30 days advance notice of the need for leave. If 30 days advance notice is not possible (e.g., because of lack of knowledge of approximately when the leave will be required to begin, a change in circumstances, or a medical emergency), the employee must at least provide notice as soon as practicable under the circumstances. Normally, it should be practicable for the employee to provide notice of the need for leave either the same day he or she becomes aware of a qualifying event or the next business day.
- **Unforeseeable Leave.** When the approximate timing of the qualifying event and the need for leave is not foreseeable, the employee must provide notice as soon as practicable under the facts and circumstances of the qualifying event. Absent unusual circumstances, it generally should be practicable for the employee to provide notice before his or her shift is scheduled to begin, as required by our normal policies.

These rules apply to each use of intermittent leave, except that when leave is to be taken on a reduced schedule basis, notice need only be given one time, but the employee shall advise the Fiscal Intermediary as soon as practicable if dates of scheduled leave change or are extended or were initially unknown and become known.

Requests for NYPFL leave should be submitted in writing to the Consumer. Failure to provide proper notice of your need for leave, or to provide the requisite forms and documentation as required by the Consumer and/or the NYPFL insurance carrier may result in the denial, delay, or revocation of leave.

In addition to the above, an employee must file a claim with the Fiscal Intermediary's NYPFL insurance carrier on the carrier's prescribed claim form(s) to obtain NYPFL benefits. The employee will also be required to provide the NYPFL insurance carrier with sufficient certification of the need for leave and supporting documentation as required by the NYPFL Law, the relevant insurance policy, and the carrier's own requirements. For example, the employee may be required to provide:

- Certification from a health care provider regarding the serious health

- condition for which the employee needs leave;
- Documentation such as a birth certificate establishing the birth of a child;
- Documentation such as court documents or placement letters establishing that the employee is in the process of adopting or has adopted a child or is fostering a child; or
- Certification of military exigencies and supporting military orders.

If an employee's need for leave may qualify under the NYPFL Law, the Fiscal Intermediary will provide the employee with a copy of the relevant NYPFL claim form(s) and complete any employer portion(s). An employee can also obtain and file the claim form(s) directly through our NYPFL insurance carrier, Gurdian Life, 1-888-482-7342, <https://www.guardianlife.com/>, P.O. Box 26100 Lehigh Valley, PA 18002-6100. Employees must complete the claim form(s), including any required certification or supporting documents, and submit them to the carrier in order to obtain NYPFL benefits. The claim form and any required certification and supporting documents must be submitted in accordance with the NYPFL Law and the carrier's requirements. Employees should contact the carrier if they have any questions about the forms and documents that must be submitted in support of their work.

## REPORTING WHILE ON LEAVE

While an employee is on NYPFL leave, he or she must notify the Consumer and the Fiscal Intermediary (due to payroll processing considerations) as soon as practicable (within two business days, if feasible) if there is any change in his or her circumstances or if his or her dates of leave change or were initially unknown and become known or estimated.

## COMPENSATION AND BENEFITS DURING NYPFL LEAVE

**Compensation during NYPFL Leave.** As noted above, NYPFL benefits are paid by the Fiscal Intermediary's NYPFL insurance carrier in accordance with the insurance policy, the maximum benefits set forth in the law, and the carrier's own rules and procedures.

During NYPFL leave employees may, but are not required to, use any available vacation days and/or sick days in order to receive full pay. Use of available vacation days and/or sick days will allow the employee to receive full pay during the leave until vacation days and sick days are exhausted. Where an employee receives full pay through use of available vacation days and/or sick days during a NYPFL leave, the Fiscal Intermediary will be entitled to receive the NYPFL payment from the NYPFL carrier as reimbursement for the NYPFL portion of the amount paid to the employee. In no event shall an employee's use of available vacation days and/or sick days during NYPFL result in the employee's receipt of more than 100% his or her average weekly wage.

**Status of Group Health Insurance during NYPFL Leave.** To the extent required by law, the Fiscal Intermediary will maintain group health insurance benefits

for employees on NYPFL leave on the same basis as coverage would have been provided if the employee had been actively working during the leave period. Any share of group health plan premiums which had been paid by the employee prior to leave must continue to be paid by the employee during the leave period. Where the employee is receiving pay directly from the Fiscal Intermediary (i.e., using available PTO), deductions for group health insurance will continue to be made on the same basis as if the employee was actively working. Where the employee is not receiving pay from the Fiscal Intermediary, arrangements will be made for the employee to pay his or her share of the group health insurance premiums while on leave. If the Fiscal Intermediary pays the employee's share of any premium payments, the Fiscal Intermediary reserves the right to recover the full value of those payments made in any manner permitted by law.

An employee whose health insurance coverage is maintained pursuant to this policy during an approved NYPFL leave will be subject to any changes in the group health plan that occur while he or she is on leave (e.g., changes in coverage, premiums, deductibles).

If an employee's premium payment is more than thirty (30) days late while the employee is on NYPFL leave, his or her group health insurance benefits may be terminated, and the employee will be extended continuing coverage opportunities in accordance with COBRA.

If an employee gives unequivocal notice of his or her intent not to return to work, his/her group health insurance benefits will cease, subject to COBRA, and the employee will have no right to job restoration.

**Other Benefits during NYPFL Leave.** An approved NYPFL leave pursuant to this policy will not result in the loss of any employment benefit that accrued before the date the leave of absence started. For all periods when an employee uses available PTO concurrently with NYPFL leave, benefits that are accumulated on an accrual basis will continue to accrue to the extent they would have otherwise. Employees will not accrue or receive any benefits (other than group health insurance benefits as noted above) for periods where NYPFL is not run concurrently with use of the employee's available PTO.

**Working during NYPFL Leave.** An employee taking NYPFL leave may not engage in other work or employment during the time the employee would have been working if not for the leave of absence or where such work or employment is inconsistent with the underlying reason(s) for his or her leave of absence. If an employee engages in such other work or employment during the leave of absence, the employee will be considered to have violated the terms of the leave of absence.

## **RETURNING FROM LEAVE**

Unless the employee's employment was or would have been terminated for reasons unrelated to the leave (e.g., Consumer dies or is hospitalized, etc.), the Consumer will restore an employee who returns from approved NYPFL leave to the same

position that the employee held prior to the leave or to a comparable position with comparable employment benefits, pay, and other terms and conditions of employment, subject to the terms, limitations, and exceptions provided by law.

Each employee is expected to return to work when the NYPFL leave ends, unless, prior to his or her scheduled returned date, the employee requests and is granted an extension of leave as an accommodation or pursuant to another policy. If an employee does not return to work on the agreed upon date after expiration NYPFL leave, and a prior extension of leave was not granted to the employee, the employee will be considered to have voluntarily resigned.

### FURTHER INFORMATION

Employees wanting further information regarding this policy should consult with their Consumer.

The Consumer will not discriminate or retaliate against an employee because he or she claimed NYPFL benefits, attempted to claim NYPFL benefits, or testified or is about to testify in a proceeding under the NYPFL Law.

This policy is intended to implement the NYPFL Law and its accompanying regulations. To the extent this policy is inconsistent therewith, the law and regulations will govern. Further, to the extent any state or local law provides for additional leave benefits, the Fiscal Intermediary will comply with any such requirements

### FACT-FINDING AND ISSUE RESOLUTION (“FAIR”) PROGRAM FOR CDPAP

To facilitate expeditious and impartial resolution of any disagreements that may arise as a result of Your status as a personal assistant with the Committed Home Care Inc. fiscal intermediary, the Fiscal Intermediary has adopted this Fact-finding and Issue Resolution Program (the “FAIR Program”). The FAIR Program is effective when you sign this document (the “Effective Date”). The FAIR Program covers any Claim between You and the Fiscal Intermediary (as these terms are defined below) that are asserted after the Effective Date.

#### **Meaning of Terms in this FAIR Program.** For purposes of the FAIR Program:

- “Fiscal Intermediary” means Committed Home Care Inc. each of its subsidiaries, affiliates, and successor entities, as well each of their partners, principals, members, agents, and employees against whom a Claim is asserted in connection with their duties for or in relation to the Fiscal Intermediary.
- “You” and “your” refers to you, the personal assistant, and any other person who may assert your rights.
- “Claim” means any claim, cause of action, controversy, or other dispute between the Fiscal Intermediary and You that that arises out of or relates to (1) your enrollment with the Fiscal Intermediary for provision of CDPAP services, (2) your disengagement from the Fiscal Intermediary, or (3) your termination of employment with a Consumer who is enrolled with the Fiscal Intermediary, and where the Claim is based on a legally protected right that

could otherwise be resolved by a court. Claim includes any disputes about your enrollment in the Fiscal Intermediary's CDPAP, termination of enrollment in the CDPAP, wages or compensation, and paid time off. "Claims" means not only initial claims but also counterclaims, cross-claims, and third-party claims, regardless of whether such claims seek legal, equitable, or declaratory relief. A legally protected right means any right that is guaranteed to you or protected for you by statute, regulation, ordinance, constitution, contract, common law, or other law, such as the Fair Labor Standards Act, the New York Labor Law, the Wage Parity Law, the Domestic Worker Bill of Rights, and the Human Rights Law. The FAIR Program applies to any and all Claims, regardless of when those claims arose or accrued or were first asserted. For avoidance of doubt, the provisions of this FAIR Program apply to claims that accrued, arose, or were asserted before execution of this FAIR Program and to claims that accrued, arose, or were asserted after execution of this FAIR Program. The provisions of this FAIR Program also apply to Claims that arise after the cessation of your services to a Consumer registered with the Fiscal Intermediary's CDPAP program.

**Are any Claims not Covered by the FAIR Program?** Yes. The term "Claim" does not include any claim, controversy, or other dispute between the Fiscal Intermediary and you: (a) for injunctive or equitable relief for breach of a restrictive covenant (e.g., non-competition covenant, non-solicitation covenant, anti-raiding covenant), unauthorized use or disclosure of confidential information or trade secrets, or similar unfair competition; (b) for workers' compensation benefits (except for claims of interference or retaliation under the workers' compensation law); (c) for unemployment compensation benefits; (d) for employee welfare or retirement benefits governed by the Employee Retirement Income Security Act ("ERISA") (except for claims for interference or retaliation under ERISA); or (e) for unfair labor practice charges under the National Labor Relations Act ("NLRA"). The FAIR Program also does not prevent you from filing a charge, testifying, assisting, or otherwise participating in any investigation or proceeding conducted by the U.S. Equal Employment Opportunity Commission, or another government agency to the extent You have a protected right to do so. But if you take such action in relation to a claim, controversy, or other dispute that would constitute a Claim and you have not fully pursued such dispute through the FAIR Program, the Fiscal Intermediary may request the government agency in question to defer its processing or investigation of such charge until the FAIR Program has been completed. Notwithstanding your rights under this subsection, you agree that, to the maximum extent permitted by law, you may recover monetary relief with respect to a Claim only through the FAIR Program. The FAIR Program also does not require the Fiscal Intermediary to begin arbitration proceedings or initiate any other procedure whatsoever before taking any action regarding your enrollment in the CDPAP program (e.g., terminating your enrollment).

**Can A Claim Be Resolved in Court?** No. Under the FAIR Program, You and the Fiscal Intermediary each waive Your respective rights to have a Claim decided by a court, judge, jury and, where permitted by law, a government agency. Instead, You and the Fiscal Intermediary agree that arbitration under the FAIR Program is the sole and exclusive method for resolving Claims. If either You or the Fiscal Intermediary files an action in court or another forum not contemplated by the FAIR Program

asserting one or more Claims and the other party successfully stays such action and/or compels arbitration of such Claim, the arbitrator may assess reasonable costs and expenses, including an award of reasonable attorneys' fees, incurred in seeking such stay and/or order compelling arbitration against the party that filed the action in court or such other forum.

**How Should You Raise a Claim Under the FAIR Program?** If you believe you have a Claim against the Fiscal Intermediary, you should first give the Fiscal Intermediary a chance to investigate and resolve the Claim before you file a demand for arbitration (the arbitration process is explained further below). You do not need to use any specific form to submit a Claim. Simply write a letter explaining your Claim and the relief sought and submit the Claim statement to Isaac Goldberger at 534 Delaware Avenue, Suite 436, Buffalo, NY 14202. As part of this process, a Fiscal Intermediary representative might meet with you to discuss your complaint. Or, depending on the nature of the Claim, the Fiscal Intermediary will investigate the Claim on its own, such as by reviewing its records. If you do not receive a satisfactory response from the Fiscal Intermediary within 30 days, you must follow the arbitration procedure set forth below if you wish to pursue the Claim.

**How Much Time do You Have to File a Claim?** An arbitration proceeding under the FAIR Program must be commenced within the time period prescribed by the statute of limitations applicable to the Claim being asserted. For purposes of statute of limitations, an arbitration proceeding is deemed commenced when a demand for arbitration is filed with the American Arbitration Association ("AAA"). Filing an internal Claim under the FAIR Program will not extend the time period within which you must file a demand for arbitration.

**How does the arbitration process begin?** To start the arbitration process, the party wishing to file a Claim must file a written demand in accordance with the rules of the AAA for starting the arbitration process. More information about the AAA may be obtained at [www.adr.org](http://www.adr.org) or by calling 1.800.778.7879.

**How is the arbitrator selected?** Arbitrators will be selected by the parties in accordance with the AAA's Employment Arbitration Rules and Mediation Procedures. The arbitrator must be a licensed attorney, or a retired judge selected from the AAA's Employment Arbitration Rules and Mediation Procedures Employment Dispute Resolution Roster, or a similar list if such list is unavailable. Unless the parties agree otherwise, the arbitrator must be a retired or former judge or a lawyer who has at least 5 years of experience with employment-related claims. No person may serve as an arbitrator unless that person has confirmed in writing that he or she is bound by and will adhere to the requirements of the FAIR Program.

**Can an attorney represent You?** Yes. Any party may be represented by an attorney. However, legal representation is not required, and you may represent yourself.

**When and where will Arbitration take place?** The arbitration will be conducted by the arbitrator in whatever manner will most expeditiously permit full presentation of evidence and arguments of the parties. The arbitrator will set the time, date, and place of the hearing, notice of which must be given to the parties at least 30 calendar days in advance, unless the parties agree otherwise. In the event the

hearing cannot be reasonably completed in one day, the arbitrator will schedule the hearing to be continued on a mutually convenient date. Any arbitration hearing will take place within Erie County, State of New York, unless the parties agree otherwise.

**What law applies to the Arbitration?** Arbitration under the FAIR Program will be conducted pursuant to the AAA's Employment Arbitration Rules and Mediation Procedures, except that under no circumstances will an arbitrator have the authority to hear or decide any Claim on a class, collective, or other group or representative basis. The arbitrator must apply the substantive law, including the applicable burdens of proof and persuasion, that would be applied by a court hearing the Claim in the venue of the arbitration. The arbitrator may grant relief that could be granted by a court hearing the Claim, including an award of attorneys' fees and costs.

**Can claims be heard or decided on a class, representative, or collective basis?**

No, this is not permitted under any circumstances. Notwithstanding anything to the contrary: (a) no arbitrator is permitted to hear or decide any Claim on a class, collective, or other group or representative basis; (b) all Claims between you and the Fiscal Intermediary must be decided individually; and (c) the AAA's Supplementary Rules for Class Action Arbitration (and any similar rules) will not have any applicability to any Claim. This means that if you have a Claim, neither you nor the Fiscal Intermediary will have the right, with respect to that Claim, to do any of the following in court or before an arbitrator: (a) pursue or obtain any relief from a class, collective, or other group or representative action; (b) act as a private attorney general; or (c) join or consolidate a Claim with the Claim of any other person. Thus, the arbitrator shall have no authority or jurisdiction to process, conduct, or rule upon any class, collective, private attorney general, or other representative or group proceeding under any circumstances. If there is more than one Claim between You and the Fiscal Intermediary, those Claims may be heard in a single arbitration hearing.

**Who pays for the arbitration?** The party claiming to be aggrieved is responsible for paying the applicable filing fee in effect and established by the AAA at the time the demand for arbitration is made. If You file the demand for arbitration and cannot obtain a waiver of the filing fee, you can ask the Fiscal Intermediary to bear such costs. The Fiscal Intermediary will review every such request in good faith and consider whether to cover all or part of such filing fee.

The arbitrator will charge a fee for his/her services and his/her costs. The Fiscal Intermediary will pay the fees charged by the arbitrator if You bring a Claim against the Fiscal Intermediary pursuant to this FAIR Program.

**Will there be discovery or depositions?** Yes. All discovery will be governed by the AAA rules.

**Can You have witnesses testify at the arbitration?** Yes. At the hearing, the parties will have the right to present proof through testimony and documentary evidence, and to cross-examine witnesses who testify at the hearing. The arbitrator will require all witnesses to testify under oath. The arbitrator(s) will also have the authority to decide whether any person who is not a witness may attend the hearing.

**The Arbitrator's Decision/Award.** The Arbitrator will issue his or her award promptly after the arbitration hearing concludes or post-hearing briefs are received. The arbitrator's award will set forth the factual and legal basis for the award, including his or her legal reasoning, and contain a summary of the facts, the issues, the governing law applied, and the relief requested and awarded. It should also identify any other issues resolved and the disposition of any statutory claims. The arbitrator's award will be final and binding on the parties.

**How Long Does the FAIR Program Apply to You?** The FAIR Program will remain in effect and survive the cessation of Your services to a Consumer registered with the Fiscal Intermediary's CDPAP program, regardless of the reason for such cessation.

**FAIR Program Opt-Out:** You will have seven (7) days after signing this FAIR Program to revoke your consent to the terms and conditions of the FAIR Program. Your consent must be revoked in writing, addressed to the Administrator, and received no later than close of business seven (7) calendar days from the date that You signed this FAIR Program.

**Miscellaneous Provisions Regarding the Fair Program:**

- **Choice of Law.** The FAIR Program and the terms of this FAIR Program shall be governed by the Federal Arbitration Act ("FAA"). The parties acknowledge and agree that the FAIR Program evidences a transaction involving interstate commerce.
- **Severability.** If any part or provision of the FAIR Program is held to be invalid, illegal, or unenforceable, such holding will not affect the legality, validity, or enforceability of the remaining parts and each provision of the FAIR Program will be valid, legal, and enforceable to the fullest extent permitted by law. However, in the event the provision prohibiting class, collective, or representative actions is found to be unlawful or unenforceable, then the entire FAIR Program will be considered null and void.
- **Notices.** Any notice required to be given to you will be directed to your last known address as reflected in the records of the Fiscal Intermediary. Any notice required to be given to the Fiscal Intermediary will be directed to Isaac Goldberger at 534 Delaware Avenue, Suite 436, Buffalo, NY 14202.
- **Amendment.** The Fiscal Intermediary reserves the right to amend or terminate the FAIR Program. Such amendments may be made by providing notice to you, electronically or otherwise, of such amendment or termination. Any amendments will be prospective only. If You continue to provide services to your consumer after receiving notice of any amendment to or termination of the FAIR Program, you will be deemed to have consented to such amendment or termination.
- **Waiver.** No waiver may be granted by either party, except in writing. No waiver of any provision of the FAIR Program will constitute a waiver of any other provision of the FAIR Program (whether or not similar), nor will such waiver constitute a continuing waiver unless otherwise expressly provided in such writing.

## CONSUMER DIRECTED PERSONAL ASSISTANCE PROGRAM

### *HIPAA Privacy: Self-Taught Packet*

The purpose of this packet is to provide personal assistants with an in-service on “HIPAA” — the Health Insurance Portability and Accountability Act. This packet was developed as an alternative method of training and provides information about protecting the privacy of our consumers. It is the objective of this packet to explain what information is protected under HIPAA, what consumer’s rights are under HIPAA and what you can do to protect a consumer’s private health information.

#### What is HIPAA?

“HIPAA” is a Federal Law that mandates that health care providers take steps to protect the protected health care information of patients. This law applies to all forms of consumer information — written or oral.

#### What is Protected Health Information?

Protected health information (“PHI”) may come in many different forms, including verbal communication, written documentation, or electronic (such as computerized billing). It includes any information that can be linked to a person receiving services.

- Name
- Social Security Number
- Address
- Names of Relatives
- Date of Birth
- Telephone Number
- Diagnosis
- Test Results
- Any treatments, services, or procedures
- A patient’s HIV status

These are just a few examples of PHI, but in general, any information that is part of a person’s clinical record is considered PHI.

#### How Do We Protect a Consumer’s PHI?

The following is a list of ways that you can help “protect” PHI:

- Keep your voice as low as possible in the home or anywhere you accompany a

patient/consumer and keep information to a minimum.

- o Do not leave any paperwork where it can be found by anyone who does not have a right to see it. This can include anything from prescription receipts to consumer records. When you are done writing down information about a consumer, promptly put it away where it belongs. Keep your consumer information with you or store it in a safe place when you don't need it.
- o Do not answer any questions about the consumer without checking to make sure it's okay. Better to be safe than sorry!
- o When you are with a consumer, always check to make sure it is okay with the consumer before you discuss his or her PHI with, or in front of a family member or friend. Don't talk in front of anyone unless you know it is okay with the consumer for this person to hear what is being said.
- o Mistakes happen: If you slip up, make sure your consumer is informed so that he or she may take the appropriate remedial action.

Examples of keeping disclosure of information to a minimum:

EXAMPLE: At reception desk in Doctor's office:

Right: "Mrs. Smith is here for her 10 o'clock appointment".

Wrong: "Mrs. Smith is here for her chemotherapy".

EXAMPLE: In Drug Store

Right: "I'm here to pick up Mrs. Smith's prescription".

Wrong: "I'm here to pick up Mrs. Smith's prescription for Prozac".

EXAMPLE: With neighbors of the patient: Neighbor to worker: "How is Mr. Munoz?"

Right: "Why don't you drop in and see him-he'd love the Company".

Wrong: "He's not looking so good. His doctor is worried about his heart".

Some cases aren't so easy:

Patient to worker: "Please don't tell my family about my high blood pressure. They worry too much about me."

Right: "Why don't we talk about it with the nurse when she comes in later?"

Wrong: "OK, Mrs. Jones, I won't."

### Consumer Rights Under HIPAA

All patients receive a "privacy notice" that explains their provider's privacy practices and that describes the rights that consumers have.

## SEXUAL HARASSMENT PREVENTION POLICY

### 1. **Sexual Harassment is Strictly Prohibited.**

The Consumer, Your Employer, is committed to maintaining a workplace free from sexual harassment. Sexual harassment is unlawful, violates the Consumer's policy on maintaining a harassment-free workplace, and will not be tolerated. Appropriate sanctions and/or disciplinary action (up to and including termination) will be enforced against individuals engaging in sexual harassment and against supervisory and managerial personnel who knowingly allow such behavior to continue.

### 2. **Sexual Harassment Definition.**

Sexual harassment is a form of sex discrimination and includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender. Sexual harassment includes unwelcome conduct, which is either of a sexual nature or, which is directed towards an individual because of that individual's sex, when:

- Such conduct is made either explicitly or implicitly a term or condition of employment,
- Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual's employment; or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment, even if the complaining individual is not the intended target of the sexual harassment.

Sexual harassment known as "hostile environment" consists of words, signs, jokes, pranks, intimidation, or physical violence which are of a sexual nature, or which are directed at an individual because of that individual's sex. Hostile environment harassment also consists of unwanted verbal or physical advances, sexually explicit derogatory statements, or sexually discriminatory remarks made by someone in the workplace which are offensive or objectionable to the recipient, which cause the recipient discomfort or humiliation, or which interfere with the recipient's job performance.

Sexual harassment known as "quid pro quo" harassment occurs when a person in authority tries to trade job benefits for sexual favors. This can include hiring, promotion, continued employment, or any other terms conditions or privileges of employment.

Sexual harassment can occur between males and females, or between persons of the same sex. Sexual harassment that occurs because the target is transgender is also unlawful.

### 3. **Sexual Harassment Examples.**

The following describes some of the types of acts that may be unlawful sexual harassment:

- Unwanted sexual advances, propositions or other sexual comments, such as:
  - Requests for sexual favors accompanied by implied or overt threats concerning the target's job performance evaluation, a promotion, or other job benefits or detriments;
  - Subtle or obvious pressure for unwelcome sexual activities;
  - Sexually oriented gestures, noises, remarks, jokes or comments about a person's sexuality or sexual experience which are sufficiently severe or pervasive to create a hostile work environment.
- Sexual or discriminatory displays or publications anywhere in the workplace, such as:
  - Displaying pictures, posters, calendars, graffiti, objects, promotional material, reading materials, or other materials that are sexually demeaning or pornographic. This includes such sexual displays on workplace computers or cell phones and sharing such displays while in the workplace.
- Physical acts of a sexual nature, such as:
  - Touching, pinching, patting, kissing, hugging, grabbing, brushing against another employee's body, or poking another employee's body;
  - Rape, sexual battery, molestation, or attempts to commit these assaults.
- Hostile actions taken against an individual because of that individual's sex, sexual orientation, gender identity, or status of being transgender, such as:
  - Interfering with, destroying, or damaging a person's workstation, tools, or equipment, or otherwise interfering with the individual's ability to perform the job;
  - Sabotaging an individual's work;
  - Bullying, yelling, or name-calling.
- Sex stereotyping – When conduct or personality traits are considered inappropriate simply because they may not conform to other people's ideas or perceptions about how individuals of a particular sex should act or look.

### **Complaint and Investigation Procedure**

Preventing sexual harassment is everyone's responsibility. But the Consumer cannot prevent or remedy sexual harassment unless he or she knows about it. Anyone who witnesses, becomes aware of, or is subjected to behavior that may constitute sexual harassment is strongly encouraged to immediately report such behavior to the Consumer. If an individual is not comfortable submitting their complaint to the Consumer, he or she should report it to the Fiscal Intermediary.

Reports of sexual harassment or any other violation of this policy should be made in writing, though verbal reports will be accepted. A Complaint Form for the submission of reports of sexual harassment may be obtained from the Fiscal Intermediary. Any report should be as detailed as possible and include the names of all individuals involved, a description of the incident(s) complained of, the names of all witnesses, and any documentation or other evidence that supports the allegations. If the report is verbal, the complainant will be asked to complete a written Complaint Form. If he or she declines, a Complaint Form may be completed based on the verbal report.

All supervisors and managers who receive a report or information about, observe, or suspect any potential sexual harassment or other violation of this policy must immediately report it to the Consumer and/or Fiscal Intermediary. A supervisor or manager who fails to make such a report or otherwise knowingly allows sexually harassing or retaliatory behavior to continue will be subject to disciplinary action, up to and including termination of employment.

Any report or complaint of sexual harassment or any other violation of this policy will be investigated by either the Consumer or the Fiscal Intermediary, as appropriate. Investigations will be conducted in a prompt and timely manner and will be confidential to the extent possible. The Consumer and, where appropriate, the Fiscal Intermediary will take prompt and appropriate corrective action whenever it is determined that sexual harassment has occurred.

All persons involved in the investigation will be accorded due process, as outlined below. While the process may vary from case to case depending on the circumstances, an investigation of a report of sexual harassment or other violation of this policy will generally include the following steps:

- Upon receipt of a report of sexual harassment or other violation of this policy, the Consumer and/or the Fiscal Intermediary will conduct an immediate review of the allegations and take any appropriate interim action.
- Relevant information will be collected.
- Interview the complainant, witnesses, and the accused.
- Where appropriate, depending on the facts of each case, notify appropriate and/or involved parties about the investigation, its outcome, and/or relevant information.
- Where necessary, implement remedial measures.

Employees are required to participate and answer truthfully any questions posed in an investigation conducted under this policy.

### **Retaliation Prohibited**

The Consumer strictly prohibits and does not tolerate any retaliation against an individual because he or she has, in good faith, made a complaint of sexual harassment or testified or assisted in a legal proceeding. Any employee who believes that he or she has been subjected to retaliation must immediately make a report to the Consumer and/or the Fiscal Intermediary.

### **Redress Rights and Adjudication Forums for Sexual Harassment**

Sexual harassment is considered misconduct and will be grounds for discipline, including termination.

Sex discrimination is unlawful under the New York Human Rights Law and the federal Civil Rights Act of 1964, Title VII. In addition, there may be applicable local laws that prohibit harassment and sex discrimination. New York City Human Rights Law, for example, prohibits sex harassment.

A complaint alleging a violation of the Human Rights Law may be filed with either the Division of Human Rights (DHR) or in New York State Supreme Court. DHR's main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458. You may call (718) 741-8400 or visit: [www.dhr.ny.gov](http://www.dhr.ny.gov). Contact DHR at (888) 392-3644 or visit [dhr.ny.gov/complaint](http://dhr.ny.gov/complaint) for more information. A complaint alleging a violation of Title VII may be filed with the Equal Employment Opportunity Commission (EEOC) within three hundred days of the alleged harassment. Contact the EEOC by calling 1-800-669-4000 (TTY: 1-800-669-6820), visiting their website at [www.eeoc.gov](http://www.eeoc.gov) or via email at [info@eeoc.gov](mailto:info@eeoc.gov) if you wish to file a complaint with the EEOC. Employees who work in New York City may file a complaint of sexual harassment with the New York City Commission of Human Rights (CHR), at 40 Rector Street, 10th Floor, New York, New York, by calling 311 or (212) 306-7450 or visiting [www.nyc.gov/html/cchr/html/home/home.shtml](http://www.nyc.gov/html/cchr/html/home/home.shtml).

The remedies available to victims of sexual harassment vary depending on the circumstances and forum involved, but may include requiring the defendant(s) to take action to stop the harassment, or redress the damage caused, including reinstatement/instatement to a job, payment of monetary damages (e.g., back pay, out-of-pocket expenses), compensatory damages, punitive damage in certain circumstances, reasonable attorneys' fees, and civil fines.

If the sexual harassment involves unwanted physical touching, coerced physical confinement, or coerced sex acts, the conduct may constitute a crime. Redress can be sought by contacting the local police department.

### **Administration of Policy**

This policy is intended to comply with and implement New York law regarding sexual harassment policies (N.Y. Labor Law § 201-g) and any accompanying regulations. To the extent that this policy is inconsistent therewith, the law and applicable regulations govern.

## **SLEEP & MEAL PERIOD POLICY FOR PERSONAL ASSISTANTS ON DUTY FOR 24 HOURS OR MORE**

The Fiscal Intermediary will pay for all hours you will work for your Employer, the Consumer. During each full 24-hour period during which you are required to be on duty, you agree that Bona Fide Meal Periods of up to 3 hours and a Bona Fide Sleep Period of up to 8 hours will not count as hours worked. All other hours during the course of such period will be considered hours worked.

1. “Bona Fide Meal Periods” are meal periods (e.g., one each for breakfast, lunch, and dinner).
2. “Bona Fide Sleep Periods” are regularly scheduled sleep periods, which include at least 5 consecutive hours that are not interrupted by a call to duty, in adequate sleeping facilities.
3. “Adequate Sleeping Facilities” means that you have access to basic sleeping amenities in the consumer’s home (e.g., a bed and linens); enjoy reasonable standards of comfort (e.g., heat); and have access to basic bathroom and kitchen facilities, which may be shared (e.g., bathing and toilet facilities, refrigerator, stove, sink, utensils). If you “live-in” the home of the Consumer, “adequate sleeping facilities” means private quarters (i.e., a living and sleeping space that is separate from the Consumer or other employees) in a homelike environment (i.e., a space that includes facilities for cooking and eating, a bathroom, and a space for recreation (these additional facilities may be shared by you and the Consumer and/or other household members).

To ensure that you are paid for all hours you work, you will be asked to certify on each timesheet whether or not you have received at least a total of at least 3 hours of Bona Fide Meal Periods and/or at least an 8-hour Bona Fide Sleep Period for each full 24-hour shift. If you do not receive a Bona Fide Meal Period or a Bona Fide Sleep Period on any one shift, you must tell your Employer. A blank Sleep and Meal Period Exception Certification Form is set forth below and additional forms are available from the Fiscal Intermediary.

Your consumer is not legally permitted to issue any discipline or retaliatory action if you report missed or interrupted meal or sleep periods or for submitting a Sleep and Meal Period Exception Certification Form.

The Fiscal Intermediary may terminate the Fiscal Intermediary relationship with any Consumer who permits their Personal Assistant to submit a false Sleep and Meal Period Exception Certification Form.

Any Personal Assistant that falsely reports work time on their time sheet may be prosecuted for fraud by the Fiscal Intermediary and the Fiscal Intermediary will report the Personal Assistant to the appropriate federal and state authorities for criminal prosecution.



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