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# ASPIRE OF WESTERN NEW YORK, INC.

## Corporate Compliance Plan

*Orig. May 2000*

*Rev. August 2004; August 2008; January 2014*

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Attachments: Hotline Poster

# I. Introduction

Aspire of Western New York, Inc. (“Aspire” or “Agency”) has adopted a Corporate Compliance Plan, (“Compliance Plan” or “Plan”) and Standards of Conduct/Business Ethics Policy & Procedure (“P&P”) as part of its Corporate Compliance Program. The purpose of the Compliance Plan is to reduce the likelihood of improper, illegal and unethical activities, and provide a process for effective resolution if compliance issues do occur. Aspire's commitment to legal and ethical business practices is essential to the advancement of its vision and mission.

The Compliance Plan and Standards of Conduct/Business Ethics P&P applies to employees, independent contractors, volunteers, and students (collectively referred to as “employees and contractors.”) All employees and contractors must comply with this Compliance Plan and the Standards of Conduct/Business Ethics P&P, which are intended to complement, not replace, federal and state laws and regulations. This policy is grounded in the realization that adherence to such standards will protect the Agency's employees and contractors from potential entanglement in legal proceedings, and safeguard the delivery of quality services to the people the Agency supports.

This plan further complies with the United States False Claims Act, Deficit Reduction Act of 2005 and New York State Medicaid Inspector General Guidelines which prohibit the following: knowingly presenting or causing a false or fraudulent claim for payment to be made; knowingly making or using a false record or statement to obtain payment on a false or fraudulent claim; conspiring to defraud the government by getting a false or fraudulent claim to be allowed or paid; and knowingly making or using, or causing 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.

It is considered a crime under the False Claims Act to commit any of the actions prohibited by the Act. Employees and contractors can be held criminally responsible for noncompliance with this Act. Violations of the False Claims Act can result in very serious penalties and recoveries of funds including treble damages for each false or fraudulent claim presented for payment. Furthermore, the False Claims Act permits employees and contractors to bring suits on behalf of the government. If the case has merit, the government will pursue the matter by investigating and prosecuting, which may result in the whistleblower receiving up to thirty percent of the final settlement or judgment. If however, a frivolous or malicious claim is made, the whistleblower has liability for the fees and costs to the government.

## **Purposes of the Compliance Plan**

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The specific purposes of Aspire's Compliance Plan are to:

1. Establish legal and regulatory compliance standards and policies.
2. Create an organization-wide system for efficient dissemination of information relating to statutes, regulations and guidelines relevant to the operations of Aspire.

3. Establish an organization-wide structure that encourages Aspire's employees and contractors to report, and seek resolution of, issues of concern.
4. Identify and prevent fraud, abuse, and unethical conduct.
5. Obtain detailed and accurate information of employee and contractor functions for the purposes of ensuring compliance and assisting the Aspire Board of Directors in decision-making.
6. Involve Board and senior management of Aspire in a continuing process of compliance education and oversight.
7. Mitigate potential administrative, civil or criminal liabilities in the event of enforcement, investigations or proceedings by governmental authorities, or potential litigation by employees or third parties.

To obtain further information or guidance about Aspire's Compliance Plan, Standards of Conduct/Business Ethics P&P and applicable laws and regulations, we urge you to contact the Corporate Compliance Officer at (716) 505-5511, or any member of the Corporate Compliance Committee.

## **II. Vision & Mission Statements**

### **Aspire's Vision**

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Aspire is the region's leader in supporting individuals with disabilities. We envision full participation of those we support in all aspects of community living. Toward that end, Aspire empowers individuals to maximize their potential, including those we support, those who work for us and those who work with us.

### **Aspire's Mission**

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Aspire's mission is to support children and adults with developmental disabilities, helping them to live their lives to the fullest by providing individualized assistance based on personal choice.

### **Aspire's Values**

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Aspire commits to the following values to support its efforts in corporate compliance and quality service:

#### **People**

We put the personal needs and goals of those we support first. We recognize the value and potential of every employee. We listen and learn from those around us, especially

those for whom we provide services. We know that everyone can make a difference and act accordingly, and recognize the dignity and unique rights of all of those who we encounter.

### **Performance**

We give the best we can at all times, demonstrating compassion and passion. We strive for excellence in all that we do. We are honest, ethical and accountable. We meet every challenge with professionalism and heart. We meet change with innovation. We live up to our responsibilities and our commitment to those we support.

### **Partnership**

We work together as a team to make a positive impact in the lives of the people we support and in our own. We are responsive and responsible to our partners, employees, families, circles of support of those who receive our services, other care agencies and our community.

## **III. Overview of Compliance Program**

### **A. Policy Statement**

The Board of Directors affirms that it is Aspire's policy to comply with all applicable laws, regulations, and ethical standards. This Compliance Plan formalizes the Agency's compliance efforts and more clearly defines the responsibilities of its employees and contractors.

### **B. Essential Elements**

Aspire intends to meet or exceed the standards set by the Office of Inspector General (OIG) and the NYS Office of the Medicaid Inspector General (OMIG) for Corporate Compliance Programs. The OIG and OMIG have recommended that health care providers include the following essential elements in their Compliance Programs:

1. Establish and implement written compliance policies, procedures, and standards of conduct.
2. Designate a compliance officer or contact who reports directly to the Board of Directors, Chief Executive Officer or other individual or body high in the organization's structure, and establish a Compliance Committee.
3. Conduct effective training and educational programs.
4. Conduct monitoring and auditing to detect noncompliance and improve quality.
5. Develop effective lines of communication for reporting violations and responding to inquiries.

6. Enforce standards through well publicized disciplinary guidelines and procedures.
7. Respond appropriately and promptly to identify legal or regulatory violations and prevent further violations through corrective actions and systemic changes in institutional and individual behaviors.
8. Establish and implement a policy of non-intimidation and non-retaliation.

The success of Aspire's Compliance Program requires a sincere commitment on the part of all employees and contractors to implement and manage these elements.

## **IV. Compliance Program Structure**

The following organizational structure provides the necessary oversight for Aspire's Corporate Compliance Program.

### **Role of Board of Directors**

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Aspire's Board of Directors has determined that the voluntary adoption of a Compliance Program is necessary to ensure that Aspire consistently complies with applicable laws and regulations. To that end, the Board of Directors has adopted resolutions authorizing the: (1) formation of a Corporate Compliance Committee, (2) appointment of a Compliance Officer, and (3) implementation of the Compliance Plan and Program on an on-going basis. These groups and their members are firmly committed to supporting each employee in meeting the standards set forth in this Plan and the Standards of Conduct/Business Ethics P&P. Furthermore, by virtue of Board Policy, the Compliance Officer has the ability to directly report concerns to the Board, and the President and Chief Executive Officer may not terminate the Compliance Officer without prior permission from the Board of Directors.

The Board will receive and review quarterly reports from the Compliance Committee, and take necessary and appropriate action in response to such reports. The Board will also respond to reports of potential or actual noncompliance received from the Compliance Officer, President and Chief Executive Officer, or a Corporate Compliance Committee member.

### **Role of the Corporate Compliance Officer**

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The Corporate Compliance Officer is responsible for ensuring adherence to Aspire's Compliance Plan and Standards of Conduct/Business Ethics P&P by the Agency's employees and contractors. As such, the Compliance Officer oversees and monitors the implementation of the Compliance Program and Plan. The Compliance Officer's duties include maintaining current legal and regulatory resources, overseeing the activities of the Corporate Compliance Committee, acting on issues of potential and actual noncompliance, and functioning as a liaison to the Board of Directors. The Corporate Compliance Officer

also coordinates internal audits, educational and training programs, and the modification of the Compliance Program and/or Plan and Standards of Conduct/Business Ethics P&P as is necessary. The Compliance Officer may seek the assistance of the Compliance Committee or others in discharging these responsibilities and may delegate certain functions as is necessary and appropriate.

### **Role of the Corporate Compliance Committee**

The Corporate Compliance Committee is responsible for reviewing the status and effectiveness of the Compliance Plan and Program, presenting and discussing potential compliance concerns and issues, and recommending changes to the Compliance Program and/or Plan and Standards of Conduct/Business Ethics P&P.

The Committee consists of administrative staff appointed by the Compliance Officer to provide support to the Compliance Officer. The current Committee consists of the President and Chief Executive Officer, Chief Fiscal Officer, Chief Operating Officer, Senior Vice President of Human Resources, Vice President of Health Services, Director of Finance, a member of the Board of Directors, the Corporate Compliance Officer (also designated as the Privacy Officer) and the Compliance Coordinator. Ad hoc members are invited to participate per topic relevance.

The Corporate Compliance Committee shall conduct meetings, maintain a written record of its proceedings and report to the Board of Directors on a quarterly basis. Any concerns about the Corporate Compliance Committee members, the Committee's actions or determinations, or the senior administration may be brought directly to the President and Chief Executive Officer or the Board of Directors.

### **Role of Outside Legal Counsel**

Outside legal counsel shall assist the Board, Committees of the Board, President and Chief Executive Officer, Compliance Officer and the Corporate Compliance Committee as needed, to identify and interpret federal and state laws and regulations, assist in maintenance of the Corporate Compliance Program, and provide legal advice to Aspire with respect to the Compliance Program.

At the discretion of the Compliance Officer, legal counsel may be notified of incidents that reasonably suggest that employees or contractors may not have acted, or be acting, in compliance with this Plan, the Standards of Conduct/Business Ethics P&P and/or applicable laws and regulations. The Compliance Officer will be responsible for facilitating an investigation into a reported incident, involving legal counsel as needed. The results of the investigation will be used by legal counsel to provide legal advice to the Compliance Officer, Compliance Committee, President and Chief Executive Officer and/or Board of Directors, as is appropriate.

## V. Standards of Conduct

### **Background**

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Aspire provides the following services: health care, community living, employment, day, transition, service coordination, fiscal management, and educational pursuant to appropriate federal, state and local licenses, certifications, permits and accreditation. As such, Aspire is subject to numerous laws, regulations, and guidelines governing issues such as: access to services; consent for services; confidentiality of health information; individual's rights; end of life decision-making; medical staff membership and clinical privileges. Like other businesses, Aspire is also subject to federal and state labor laws, anti-discrimination laws, consumer protection laws, tax laws and general and professional liability laws.

Aspire's policy requires that employees be familiar with the legal and regulatory requirements applicable to their job responsibilities. Employees are not expected to become experts in every legal and regulatory requirement and should consult with their supervisor, Division Vice President, or the Corporate Compliance Officer, who has direct access to outside legal counsel, for guidance when they have legal or regulatory concerns.

Fraud is defined as a misrepresentation, omission or concealment calculated to deceive. Abuse is defined as performing acts that are inconsistent with acceptable business practices. Aspire takes health care fraud and abuse very seriously and strictly prohibits acts of fraud or abuse. It is Aspire's policy to provide information to all employees and contractors about Aspire's Corporate Compliance Program as well as all applicable regulations such as the False Claims Act. If an employee or contractor discovers an event that represents fraud or abuse, he or she must report the incident to the Corporate Compliance Officer at Aspire's Hotline: 505-5671 or report the incident to the appropriate supervisor who must in turn report the incident to the Corporate Compliance Officer. A report may also be made directly to the Department of Justice or NYS Medicaid Inspector General, but it is Aspire's intent to fully investigate and protect the agency from any and all acts of fraud or abuse. Aspire protects any reporter (Whistleblower) who claims a violation of the federal or state false claims acts. Aspire will not retaliate against any employee for informing Aspire or the federal or state government of a possible False Claims Act violation.

### **Clinical Services**

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Clinical Staff will ensure that patient care is necessary, appropriate, and well documented. Aspire personnel must verify patient eligibility, accurately record all services provided, and document physician authorization when necessary.

### **Documentation, Coding and Billing**

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Aspire is committed to ensuring that its documentation, coding and billing practices

comply with all federal and state laws, regulations, guidelines and policies. All Aspire employees and contractors must abide by the following three principles:

1. Prepare and maintain individual/patient records and reports accurately and honestly.
2. Take due care to ensure that all claims submitted to any government or private health care program, individual, department or agency are accurate and conform to all pertinent federal and state laws and regulations.
3. Only submit claims that accurately reflect services or products that were necessary and actually rendered, and are supported by relevant documentation, including physician authorization as needed.

Any type of inaccurate or duplicative billing, whether it is intended or not, can subject Aspire and the involved employee(s) and contractor(s) to severe administrative, civil and/or criminal penalties. Any employee or contractor who knowingly presents or causes to be presented, claims for payment or approval which are false, fictitious, or fraudulent, will be subject to immediate termination.

## **Record Management**

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Aspire maintains a system for the creation, retention, retrieval and destruction of documents. The types of documents developed under this system include:

1. Clinical records
2. Billing claims documentation and other financial records
3. Accounts receivable aging
4. Records necessary to support Aspire's compliance process and shows the effectiveness of its Compliance Program
5. Employee training documentation
6. Results of any investigations
7. Results of Aspire's auditing and monitoring efforts

It is Aspire's intent to prepare and maintain records and reports accurately and honestly. This includes the reporting of time worked, business expenses incurred, revenues generated, and costs incurred. All contracts entered into by Aspire will accurately specify the services to be rendered. All employees or contractors will maintain the confidentiality of all information gained in the course of their employment or independent contractor relationship with Aspire, as required and appropriate.

No employee or contractor will falsify, backdate, intentionally destroy or otherwise tamper with any document to gain a real or perceived advantage for Aspire. However,

unnecessary or outdated documents may be purged in accordance with Aspire's Policies and Procedures. Under no circumstances may documents relating to any current investigation or inquiry regarding possible billing errors or suspected fraud or abuse be altered or destroyed, and under no circumstances may documents relating to any such closed investigation or inquiry be destroyed without permission of the Compliance Officer.

## **Financial Reporting**

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Aspire is committed to creating and maintaining complete and accurate financial records. These records serve as the basis for managing the business, measuring and fulfilling Aspire's obligations to individuals, patients, employees, suppliers and others, and complying with tax and financial reporting requirements. Aspire's external and internal financial statements are prepared in accordance with generally accepted accounting principles, and are subject to an annual external audit by independent Certified Public Accountants.

## **HIPAA and Confidentiality of Health Information**

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Aspire will comply with all laws protecting the confidentiality of individuals' and patients' health information, including the HIPAA and HITECH Omnibus Rule that became effective on March 26, 2013 and New York State patient confidentiality laws. Aspire will ensure that individual health information, both written and electronic, is protected, and is not used, disclosed or accessed without the express permission by the patient/individual/family/guardian or other designee except as required or permitted by law. A detailed description on how Aspire handles individuals' and patients' health information is found in Aspire's Notice of Privacy Practices and related policies.

## **Screening Employees and Contractors**

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Aspire will not employ or do business with individuals who have been convicted of health care fraud or listed by a federal agency as excluded, debarred or otherwise ineligible to participate in federally funded health care programs. Applicants for employment with Aspire will be required to disclose any criminal convictions, civil monetary penalties or exclusion action(s) imposed against the individual. Aspire routinely conducts background and exclusion checks to ensure compliance.

Special care must be taken to ensure that no conflicts of interest exist between Aspire and the persons or firms to be retained. All commission and fee arrangements shall be covered by a written contract, which among other things should contain a clear description of the services to be rendered. Commissions or fees paid to a contractor, subcontractor or consultant must be reasonable as to the amount and consistent with the normal practice of the industry for the same type of service. Contractors are required to observe the same standards of conduct as Aspire's employees when conducting business for Aspire. Contractors should be made aware of the Compliance Plan and Code Standards of Conduct/Business Ethics P&P, which should be reflected in an executed agreement between the parties. It is Aspire's policy that vendor relationships are not

contingent upon donations or other unfair trade practices and avoids any appearance of direct or indirect conflict of interest by accepting a gift which could be considered influencing decision making.

## **VI. Training and Education**

### **Staff Training**

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Aspire believes that training and education for its staff promotes quality care, excellence, and regulatory compliance. Aspire's licensed health care professionals are required to participate in continuing education as a condition of state licensure and private accreditation. Aspire encourages its non-professional personnel, especially those in coding, billing, management and finance, to take advantage of appropriate educational opportunities to keep current with changes in their fields. In addition to professional training, staff will receive regular compliance education as part of employment.

### **New Employee Training**

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New employee orientation will include an introduction to Aspire's Corporate Compliance Plan and Standards of Conduct/Business Ethics P&P. New employees will be instructed on the methods to report violations, and disciplinary measures for violating the Plan and Standards of Conduct/Business Ethics P&P. This orientation will be supplemented by specific regulatory training by the new employee's supervisor, geared toward the employee's responsibilities and job function.

### **Ongoing Education**

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Continuing education programs will incorporate compliance concepts and updates of regulatory compliance information needed to ensure that employees are current in their knowledge. Employees will receive continuing corporate compliance training appropriate to their job description and function each year. The Compliance Officer will periodically monitor the education offered by the various departments.

The Compliance Officer, Compliance Committee, President and Chief Executive Officer and the Board shall periodically monitor, evaluate and assess the effectiveness of the Agency's education programs and shall revise, or oversee the revision of, such programs as necessary. The Compliance Committee shall report to the Board periodically as circumstances dictate on the status and effectiveness of educational and training programs.

### **Compliance Plan Distribution and Acknowledgement**

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The Compliance Plan will be made available to all employees, contractors, and members of

the Board of Directors, as appropriate. Aspire's Board members will each be required to examine this Plan and certify his/her examination within sixty (60) days of its receipt. New Board members must certify their receipt of an examination of this Plan within sixty (60) days after their commencement date.

All employees will be required to acknowledge, in writing, that adherence to Aspire's Corporate Compliance Plan and Standards of Conduct/Business Ethics P&P is a condition of his/her employment. In addition, adherence to the requirements of continuing education and training will be considered in the overall evaluation of performance for appropriate employees.

## **VII. Reporting and Responding to Violations**

### **Duty to Report**

All employees and contractors are encouraged to report any suspected or actual improper conduct to the agency. Any conduct that a reasonable person would in good faith believe to be erroneous or fraudulent, or any known or possible violations of the law, regulations, or the Agency's Compliance Plan, Standards of Conduct/Business Ethics P&P and/or policies or procedures, should be reported. Any reports or inquiries made in good faith that are received by the Compliance Officer will be taken seriously and investigated promptly.

### **How to Report**

Any employee or contractor may report his/her good faith belief of suspected or actual improper conduct by any of the following methods:

1. Orally or in writing to the Compliance Officer
2. By calling the Compliance Hotline at (716) 505-5671 at any time
3. Orally or in writing to his/her supervisor or a Compliance Committee member

All reports of suspected or actual noncompliance should contain as much detail as possible including names, dates, times, location and the specific conduct that the individual believes may violate the law, regulations, Agency's Compliance Plan, Standards of Conduct/Business Ethics P&P, and/or policies or procedures.

### **Confidentiality Policy**

The Compliance Officer will review and evaluate the information received to determine if there is a basis to conduct further inquiry. If so, a discreet inquiry will be made in such a way as to maximize the confidentiality of the reporter. Aspire will honor all requests for

confidentiality to the extent reasonably possible. If it becomes necessary to take steps which might reveal the identity of the reporter, Aspire will make every effort to provide advance notice to the reporter. However, Aspire cannot guarantee confidentiality of the reporter's identity.

### **Non-Retaliation Policy**

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There will be no retaliation or retribution against an employee or contractor who submits a good faith report of suspected or actual improper conduct. Failure to report possible improper conduct is itself a violation of Aspire's policy and can result in discipline of the individual who fails to report.

However, employees or contractors who intentionally and maliciously use the Hotline or file reports containing false allegations will be subject to disciplinary action.

### **Investigations**

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In the event an investigation of a particular practice or suspected violation is warranted, it may involve a review of relevant documentation and records, interviews with staff, and an analysis of applicable laws and regulations. Results of such investigations will be documented and made available to the Compliance Committee, the Board of Directors and/or legal counsel, as appropriate, on a confidential basis. Precautions will be taken to ensure that critical documents are not altered or destroyed. Records of the investigation may include a description of the investigative process, copies of interview notes and key documents, a log of witnesses interviewed and documents reviewed, and the final result of the investigation. Any disciplinary actions taken, reports prepared and any corrective action recommended may also be included.

The investigation may be conducted by the Compliance Officer or his/her designee, legal counsel, and/or an outside expert. Legal counsel may advise on matters of attorney/client privilege, disclosures, and whether Aspire has any affirmative duties to report the violations and/or make restitution to health care payors.

### **Corrective Action**

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If an investigation or audit reveals improper or illegal conduct, including billing, coding or claims submissions problems, the Compliance Officer or his/her designee, (and legal counsel if necessary) are responsible for drafting corrective actions. The corrective actions should include each billing practice or activity that may not meet all of the applicable requirements and designate what will be done to correct that practice. Timelines and deadlines should be established for those corrective actions. In addition to the possibility of returning overpayments, and the citing of claims submission problems, consideration should be given to disciplinary actions, incident reporting, and voluntary disclosure as set forth in the OIG Provider Self-Disclosure Protocol and/or by the OMIG.

All corrective actions should be thoroughly documented and retained in the files of the

Compliance Officer for at least three years. The decision whether to disclose the results of an investigation or audit to federal or state authorities or private payors will be made by Aspire's President and Chief Executive Officer based upon recommendations of the Compliance Officer, Compliance Committee, and/or legal counsel.

## **VIII. Program Enforcement and Discipline**

### **Discipline Policy**

Each employee and contractor is responsible for guaranteeing that his/her/its conduct fully complies with Aspire's Compliance Plan, Standards of Conduct/Business Ethics P&P, and policies and procedures. Additionally, an employee or contractor failing to detect and/or report any such violation is itself a violation of Aspire's policy, and possibly applicable law. Any violations by employees will be addressed in accordance with the Agency's Progressive Discipline Policy. Any violations by a contractor will provide a basis for sanctions including written admonition, financial penalties, or termination of the contractor's relationship with the Agency.

### **Employee and Contractor Sanctions**

Specifically, employees and contractors will be disciplined for:

1. Failure to report conduct by an employee or contractor that a reasonable person knows or should have known violates a law, regulation and/or guideline.
2. Failure to report an employee's or contractor's suspected or actual violation of the Compliance Plan, Standards of Conduct/Business Ethics P&P, and/or Aspire policy or procedure.
3. Providing false or incorrect information (or information that the employee or contractor should have known was false or incorrect) to Aspire and/or a third party.
4. Intentionally reporting a false violation of the Compliance Plan, Standards of Conduct/Business Ethics P&P, and/or Aspire policy or procedure.
5. Unlawfully using or disclosing patients' and individuals' health information.

Upon concluding an investigation of a reported violation or receiving an audit report disclosing a violation, the Corporate Compliance Officer, President and Chief Executive Officer/Designee and, as appropriate, legal Counsel shall determine whether disciplinary measures are in order, the type of discipline or sanction to be imposed, and which individuals or entities should be disciplined or sanctioned.

## **Record Keeping**

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The Compliance Officer will ensure the Agency maintains a record of disciplinary actions and sanctions imposed on employees and contractors of the Agency.

# **IX. Ongoing Monitoring and Auditing**

## **Commitment to Continuous Improvement**

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In order to objectively determine whether Aspire's Compliance Program is functioning in the manner intended, monitoring of its implementation and operation, and regular reporting to the Board, will be necessary. Periodic reports on the ongoing monitoring of the Agency's compliance efforts, and follow-up reports with respect to identified areas of risk or vulnerability will be developed by the Compliance Officer and maintained in a dedicated compliance file. This file will be shared with the Board, the Compliance Committee, and the President and Chief Executive Officer, via reports. It is intended that this process will result in continuous improvement in the professional, business and operational practices of the Agency.

## **Standard Auditing Procedures**

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The Corporate Compliance Officer and Compliance Committee are responsible for ensuring that internal and external corporate compliance auditing takes place on a regular basis. Additionally, Aspire will utilize governmental audits and reviews as a method for obtaining feedback regarding regulatory compliance. Aspire will conduct a number of self-auditing practices, including Divisional peer reviews, administrative Quality of Life reviews, and Quality Assurance/Quality Improvement reviews.

The Compliance Officer is primarily responsible for auditing compliance with the standards set forth in this Plan and the Standards of Conduct/Business Ethics P&P. This shall include periodic audits in an attempt to ensure that clinic documentation, billing, claims processing, reimbursement procedures and practices, and the maintenance and dissemination of health information adhere to federal and state laws, regulations and guidelines.

## **Corrective Action**

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If deficiencies are identified, the Compliance Officer, his/her designee, other appropriate staff, and legal counsel, as appropriate, shall: (1) review the identified deficiency(ies); (2) develop, in consultation with appropriate resource persons, a corrective action plan to remedy deficiency(ies) identified, including time frames for completion of the corrective actions; and (3) provide the corrective action plan to those individuals who will be charged with the responsibility of implementing it. The Compliance Officer shall

consider whether disciplinary action, incident reporting, and/or voluntary disclosure is required or prudent. Such decisions shall be made by the appropriate individual(s) based in part or in whole on the recommendation of the Compliance Officer.

### **Retention of Records**

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Completed report forms, reports, corrective action plans, and written verifications of implementation of corrective action plans will be retained in the files of the Compliance Officer for at least three years.

### **Audit Adjustments**

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Any overbillings, underbillings or documentation deficiencies identified as a result of audit and monitoring activities shall be adjusted and/or remedied in accordance with applicable laws, regulations and guidelines.

### **Deviations**

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If periodic review and monitoring activities identify substantial deviations from an acceptable norm, the Compliance Officer and other appropriate staff shall take prompt steps to address such deviations. Where additional investigation of such deviations is appropriate, the Compliance Officer and President and Chief Executive Officer, in consultation with the Compliance Committee, shall retain the services of such independent advisors as shall be necessary to address such deviations.

### **Trend Analysis**

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The Compliance Officer (or his/her designee) shall periodically examine the billing records of Aspire to determine relative prevalence of billing codes in order to observe and record material deviations from baseline trends. The results of such reviews shall be reported to the Compliance Committee and shall be examined for the purposes of vulnerability assessment, risk management, and for such other purposes as are consistent with applicable laws and regulations and Aspire's Compliance Program.

### **Documentation of Agency Consultations**

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When an Aspire employee or contractor, in his/her/its efforts to comply with a particular law, regulation or rule, requests advice from an employee of a federal, state, or local agency; Medicare intermediary or carrier; such person, with advice from legal counsel as appropriate, should document in writing the consultation (including the name and title of the party consulted, the date and time of the consultation, the subject matter of the consultation and the advice received.) Copies of consultations involving substantial issues related to reimbursement or regulatory standards should be provided to the Compliance

Officer for retention. Written documentation of outside agency guidance is critical if Aspire, and the individual requesting such consultation, intend to rely on such guidance.

Written documentation of requests for outside agency assistance is crucial to demonstrating the good faith and due diligence of Aspire and its employees and contractors when resolving difficult program and reimbursement issues. The ability to establish good faith reliance on outside agency guidance will assist in avoidance or mitigation of fines, penalties, and assessments.

## **X. Response to Government and Payor Investigations**

### **Government or Payor Investigations**

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If any Aspire employee or contractor is contacted (e.g., inquiries, subpoena, personal visit) by a government agency, contractor, or private payor regarding Aspire's business practices and/or relationships, the employee or contractor is required to notify the Compliance Officer or designee immediately and instruct the visitor or inquirer to contact the Compliance Officer. The Compliance Officer may notify legal counsel. It is Aspire's policy to cooperate with governmental agencies and other payors consistent with the protection of the legal rights of those individuals or entities involved.

Investigations by the government and private payors are commonplace and seldom result in criminal prosecutions. The mere fact that an inquiry is underway does not in any way suggest that Aspire has acted improperly. The government and private payors have the right and obligation to conduct certain inquiries/investigations just as Aspire has the right to demand that they be done in an orderly and proper fashion.

### **Regulatory Agency Audits**

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The Corporate Compliance Officer and the Corporate Compliance Committee are responsible for reviewing government or private payor audit findings and for establishing a course of action with assistance from outside counsel, if appropriate. The Corporate Compliance Committee shall ensure that the Compliance Officer follows the established Reporting Policies for dealing with Regulatory Agency audit findings.

### **Contact with Non-Company Persons**

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Unless it is part of an employee's written job description to have contact with the following categories of individuals, all employees must comply with guidelines below:

*Contact with Media:* All contacts with anyone from the media must be referred to the President and Chief Executive Officer or Chief Operating Officer. Employees should politely, but firmly decline any discussions with media representatives, no matter how seemingly harmless it may be.

*Contact with Attorneys:* All contact with anyone claiming to be an attorney should be referred immediately to the Corporate Compliance Officer or legal counsel. Like all companies, Aspire is involved in various types of litigation. Attorneys representing those with interests contrary to Aspire's occasionally contact employees directly in an effort to obtain information. Employees should politely, but firmly, refuse to engage in any discussions with the attorney.

## **XI. DRA False Claims Act Policy Provisions**

### **Introduction**

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Aspire is committed to preventing health care fraud and abuse and complying with applicable state and federal fraud and abuse laws. To ensure compliance with such laws, Aspire has mechanisms in place to detect and prevent fraud, waste, and abuse. It also supports the efforts of federal and state authorities in identifying fraud, waste and abuse. This policy provides information to our employees and contractors about Aspire's procedures to detect fraud, waste, and abuse, including: 1) how to report concerns internally; 2) an overview of the Federal Civil False Claims and Program Fraud Civil Remedies Acts and applicable state laws; and 3) whistleblower protections, as required by the Deficit Reduction Act of 2005. Questions regarding this policy should be directed to Aspire's Compliance Officer.

### **Fraud and Abuse Laws**

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#### **A. FEDERAL LAWS**

1. *Federal False Claims Act.* The Federal False Claims Act ("FCA") imposes liability on any person who submits a claim to the federal government that he/she knows (or should know) is false. The FCA also imposes liability on an individual who: i) knowingly submits a false record to obtain payment from the government; or ii) obtains money from the federal government to which he/she may not be entitled, and then uses false statements or records in order to retain the money.

In addition to having actual knowledge that the claim is false, a person who acts in reckless disregard or in deliberate ignorance of the truth or falsity of the information can also be found liable under the FCA. Proof of specific intent to defraud is not required. However, honest mistakes or mere negligence are not the basis of false claims. The FCA provides for civil penalties of five thousand five hundred dollars and eleven thousand dollars per false claim plus three times the amount of damages that the government sustains.

2. *Federal Program Fraud Civil Remedies Act of 1986.* The Federal Program Fraud Civil Remedies Act of 1986 is a statute that establishes an administrative remedy against any person who presents or causes to be presented a claim or written statement that the person knows or has reason to know is false, fictitious, or fraudulent due to an assertion or omission

to certain federal agencies (including the Centers for Medicare and Medicaid Services). The word “claim” in the statute includes any request or demand for property or money, e.g., grants, loans, insurance or benefits, when the United States Government provides or will reimburse any portion of the money.

The Federal government may investigate and, with the Attorney General's approval, commence proceedings if the claim is less than one hundred and fifty thousand dollars. The Act provides for civil monetary sanctions to be imposed in administrative hearings, including penalties of five thousand five hundred dollars per claim and an assessment, in lieu of damages, of two times the amount of the original claim.

## **B. STATE LAWS**

1. *New York False Claims Act.* A person may not knowingly present a false claim to a state or local government or make a false record or statement to ensure payment of a false claim by a state or local government, or use a false statement to decrease an obligation to pay money to a state or local government. Honest mistakes or mere negligence are not the basis of false claims. The New York False Claims Act provides for civil penalties of between six thousand dollars and twelve thousand dollars plus three times the amount of damages which the state and/or local government sustain.

2. *False Statements Law.* It is illegal for a person or corporation to use false statements to obtain (or try to obtain) public funds for Medicaid services or supplies, and such conduct may result in damages and monetary penalties.

3. *Martin Act for Health Care Fraud.* The Martin Act adds provisions to the New York Public Health Law with a broad definition of fraudulent practices that allows the Attorney General to investigate and criminally prosecute health care fraud. This law also permits the Attorney General to investigate health care fraud by compelling witnesses to be examined under oath, issuing subpoenas for documents, impounding records, and requiring the cooperation of other public officers.

4. *Mandatory Compliance Programs.* The New York Social Services Law requires certain Medicaid providers to establish and implement a compliance plan. The affected Medicaid providers include Article 28 providers (hospitals, skilled nursing facilities, diagnostic and treatment centers), Article 36 providers (licensed and certified agencies, long term care and AIDS home health care programs), and Articles 16 and 31 Mental Hygiene providers. In addition, all health care providers “*for which Medicaid is a substantial portion of their business operations*” must adopt and implement compliance programs.

5. *New York Anti-Kickback Law.* Medicaid providers shall not accept or give (or agree to accept or give) anything in exchange for the referral of Medicaid services or to purchase, lease or order any Medicaid good, facility, service or item.

6. *New York Self Referral Prohibition.* Certain practitioners are not allowed to refer patients to health care providers when the practitioner, or the practitioner's immediate family member, has a financial relationship with such health care provider. This law

applies to practitioners who order clinical laboratory, pharmacy, radiation therapy, physical therapy or x-ray or imaging services. There are a number of exceptions to this prohibition which may make such referrals acceptable.

7. *Misconduct for New York Licensed Professionals.* It is misconduct for licensed professionals to engage in certain activities. Violation of the following laws may also constitute a violation of the federal or state False Claims Acts:

- i. Willfully or grossly negligently failing to comply with substantial provisions of federal, state or local laws and rules or regulations governing the practices of the profession.
- ii. Willfully making or filing a false report, or failing to file a report required by law or by the Education Department, or willfully impeding or obstructing such filing, or inducing another person to do so.
- iii. Medical professionals may not: a) directly or indirectly give or receive (or agree to give or receive) anything for the referral of a patient or in connection with performing medical services; b) permit anyone to share in the fees for professional services, other than a partner, employee, associate in a professional firm or corporation, professional subcontractor or consultant, or legally authorized trainee; c) directly or indirectly split a fee for goods, services or supplies prescribed for medical diagnosis, care or treatment or receive a credit, commission, discount or gratuity in connection with the furnishing of professional care or service; d) permit anyone to share in their fees for medical services, except for a partner, employee, associate in a professional firm or corporation, professional subcontractor or consultant authorized to practice medicine, or a legally authorized trainee.

8. *New York Penal Law Health Care Fraud Provisions.* Health Care Fraud in the first through fifth degrees is included in the New York State Penal Law for filing false claims.

9. *New York Penal Law Insurance Fraud Provisions.* Insurance Fraud in the first through sixth degrees is included in the New York State Penal Law for filing false claims for insurance payments.

## **Whistleblower Protection**

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### **A. FEDERAL LAW**

Employees may bring a civil action in the name of the government for a violation of the federal False Claims Act. These individuals, known as "*qui tam* relators," may share in a percentage of the proceeds from a False Claims Act action or settlement. The FCA provides for protection for employees from retaliation. An employee who *is* discharged, demoted, suspended, threatened, harassed, or discriminated against in terms and conditions of employment because of lawful acts conducted in furtherance of an action under the False Claims Act may bring an action seeking reinstatement, two times the amount of back pay plus interest, and other enumerated costs, damages, and fees. However, if the employee brings an action against an employer that has no basis in law or

fact, or is primarily for harassment, the employee bringing the lawsuit may have to pay the employer its fees and costs.

## **B. STATE LAW**

New York State Law also provides that employers are not able to retaliate against employees who disclose to a supervisor or to a public body (only after disclosing to a supervisor and allowing time for the company to correct such issue) an instance of health care fraud by the employer, who provide information before a public body investigating potential health care fraud by the employer, or who refuse to participate in a practice in violation of a law. This law also provides protections for employers against employees who bring an action under the law without basis in law or in fact.

### **Detection and Prevention of Fraud, Waste and Abuse**

Aspire maintains an anonymous compliance hotline to accept calls from employees and contractors concerning suspected fraud and abuse. Employees and contractors are encouraged to report any issues of concern to the compliance hotline. Aspire has personnel dedicated to conducting periodic internal audits of Aspire's compliance with state and federal fraud and abuse laws.

### **What to do if an employee suspects Fraud, Waste or Abuse Has Occurred**

If an employee believes fraud, waste or abuse has occurred, the employee is encouraged to:

- Contact his/her immediate supervisor and report the facts to him/her.
- Call the Aspire's Compliance Hotline at 505-5671.
- A report may also be made by the employee directly to the Department of Justice or the New York State Office of Medicaid Inspector General. However, Aspire encourages employees to consider first reporting suspected fraud, waste or abuse to Aspire to allow Aspire to quickly address potential issues.
- Aspire will not retaliate against any employee for informing Aspire or the federal or state government of a possible violation.

An employee with questions regarding this policy should contact Maria Torgalski, Vice President of Quality and Corporate Compliance Officer at 505-5511.

## XII. Summary – Questions and Answers

*What is the Aspire Corporate Compliance Program?*

The aim of the Corporate Compliance Program is to prevent and detect violations of the law and to ensure that Aspire and all of its employees and contractors properly and legally perform their assigned duties. The Corporate Compliance Program was approved by the Aspire Board of Directors.

*Who is responsible for carrying out our Corporate Compliance Plan?*

Every employee has a part to play because employees are the eyes and ears of the organization. Anyone who sees or has reason to believe that a policy, procedure, or law is not being followed is responsible to report his/her concern to the Corporate Compliance Officer in a timely manner.

*How can an employee report a concern or potential violation?*

A Compliance Hotline has been established in the Corporate Compliance Officer's office. The HOTLINE telephone number is (716) 505-5671. It is available 24 hours a day, seven days a week. Alternately, a written report may be submitted to the Corporate Compliance Officer, the employee's supervisor, or a Compliance Committee member.

*Does this mean I do not need to report problems to my supervisor or manager?*

Employees still need to inform their supervisor or manager of any violation of policies or procedures or of any activity that appears unethical or illegal. If you do not know whether or not the Corporate Compliance Officer should be notified, contact the Compliance Officer directly for advice.

*Why is this necessary?*

Corporate compliance programs are required by many Federal and New York State regulatory agencies. The federal and state governmental agencies which fund Aspire (i.e. Medicaid, Medicare, OPWDD, State Education Department, etc.) monitor Aspire's compliance with regulations and laws. Any violation of these laws, even an error which was not intended, is a serious matter. That is why we must all work together to ensure we as an organization are following all laws, policies and procedures.

## **XIII. Related Policies**

The policies listed below from the *Aspire of WNY Policies and Procedures Manual* (Agency-Wide) are available electronically on the Agency's Shared File under Agency Wide P&P or you may contact your supervisor or the Corporate Compliance Officer to obtain a copy:

- Standards of Conduct/Business Ethics
- HIPAA Compliance
- Confidentiality of Consumer Information
- Conflict of Interest
- Complaints & Concerns
- Corporate Compliance Audits
- DRA False Claims Act
- Routine Exclusion Checks