

Medicaid Compliance Program
Arbor Housing and Development – Standards of Conduct

Corporate Compliance

Arbor Housing and Development is committed to implementing and maintaining a successful corporate compliance program. In doing so, it is imperative that all employees, interns, volunteers and Board Members understand and accept their responsibility for following all federal and state laws, regulations, policies and procedures that apply to their respective program/department; while discharging the responsibility of their assignment and/or key job functions and as a key contributor to the success of AH&D.

Purpose of the Corporate Compliance (CC) Program:

- Clearly communicates written policy/procedures and Code of Conduct that encompasses acceptable and unacceptable behavior as set forth by AH&D and emphasizes **duty of care** (*standard of reasonable care while performing any acts that could foreseeably harm others*) and **good faith** (*honesty in dealing with other people*).
- Select one (1) executive level employee to assume the responsibilities and duties of the day-to-day implementation of AH&D's adopted compliance program, referred to as the Compliance Officer. The Compliance Officer must have direct access to the Chief Executive Officer / President and the Board of Directors. AH&D's Compliance Officer at the time of this writing is the Human Resources Officer.
- Train and educate employees, interns, volunteers and Board Members in areas of relevance for their programs, departments, regulations, rules, and funders as defined under state and federal requirements.
- Identify and make public methods to communicate with the Compliance Officer; communication will ensure the program operates effectively by maintaining transparency and will promote accessibility to the Compliance Officer.
- Conduct responsible recruiting, perform legal background checks, hire and retain appropriate employees and select Board Members with a commitment to AH&D's Mission, Vision and Values.
- Publish employee disciplinary process, incorporate elements of CC in annual performance reviews, and encourage duty of care and good faith participation of employees, interns, volunteers and Board Members.
- Establish risk mitigation procedures and conduct regular audits in the attempt to reduce errors and alleviate fraudulent behavior.
- Promote and demonstrate a Non-Intimidation/Non-Retaliation environment for good faith participation by employees, interns, volunteers and Board Members.

Essentials of the Corporate Compliance (CC) Program:

Policies noted below will provide each employee, intern, volunteer and Board Member with guidance when searching for AH&D's definition of Expectations, Code of Conduct and Unacceptable Behavior when acting on behalf of or when delivering services to client/resident/tenant and external partners. In addition, the Federal and State law pertaining to the Whistleblower Policy, False Claims Act, and Americans with Disability Act are defined with the intended purpose of eliminating any confusion of your rights and responsibility.

Expectations:

- Report to work on time and work their scheduled shift, except in cases of emergency.
- In the case of an emergency, contact their immediate Program Director, Program Supervisor or designee.
- Adhere to client/resident/tenant/external partner boundary policy and procedure.
- Effectively discharge their key job functions in accordance with AH&D and program rules and regulations, Personnel Policy Manual, AHD Code of Conduct and expectations.
- Support a Non-Discrimination/Anti-Harassment/Sexual Harassment free work environment, foster a respectful environment and refrain from unprofessional conduct.

Code of Conduct:

The Code of Conduct has been developed for the purpose of fostering and maintaining trust and confidence in the professionalism and integrity of every interaction. All employees, interns, volunteers and Board Members are expected to adhere to the Code of Conduct and refer to it as a guiding principle when interacting with each other, clients, tenants, property owners, residents, and external partners.

- I understand that I must remain flexible, creative, and committed to discharging the duties of my key job functions.
- I will realize the importance of supporting everyone's preferences, consistent with AH&D's policy, provided that such preferences are lawful.
- I acknowledge each person should have the opportunity to direct their own life, to live within communities of their choosing and be free from abuse, neglect, and unsafe conditions.
- I will assist individuals participating in AH&D programs, pursue opportunities and resources available to all community members, whenever possible within AH&D policy.
- I will embrace diversity, honor choices, and demonstrate inclusion.
- I will inform each individual of their rights and responsibilities within AH&D policy, procedure and were lawful under applicable law.
- I will advocate for informed decision making and an understanding of an individual's options as defined by AH&D program and policy and were lawful under applicable law.
- I will protect from unauthorized use or disclosure, except as required for legitimate business purposes and/or permitted by law or regulation an individual's privacy and confidentiality.
- I will not discriminate against individuals participating in AH&D programs and/or colleagues based on race, religion, national origin, sex, age, sexual orientation, gender identity, gender expression, transgender status, economic condition, disability, or any other protected category under applicable federal, state or local laws.
- I will seek to enhance my competency through continued education and/or training opportunities and seek direction and guidance from my director, supervisor, or executive team when I am unsure of appropriate action.

Unacceptable Workplace Behavior

Arbor Housing and Development fully expects that all employees will support a safe, harmonious and productive work environment. This can only be achieved when everyone cooperates with and understands acceptable workplace behavior.

For the purpose of this policy, "*individual*" is defined as a client, tenant, property owner, resident, co-worker, supervisor, Board Member or external constituent.

Any employee who engages in unacceptable workplace behavior will be subject to written disciplinary action, up to and including suspension or immediate termination.

The list below contains examples of unacceptable workplace conduct. The intention of this list is to assist AH&D employees understand and identify such conduct.

- Neglect or abuse (including but not limited to physical, mental, and/or sexual) of any individual.
- Willfully or intentionally failing to obey a lawful and reasonable request of a director, supervisor, or designee.
- Delivering program services to family members.
- Threatening or foul language toward any individual.
- Creating or contributing to fighting, bullying, and humiliation of another individual.
- Spreading malicious gossip and/or rumors.
- Theft or inappropriate removal or possession of AH&D property or that of any individual.
- Unauthorized removal and/or dissemination of AH&D documents.
- **Willfully creating or contributing to falsification or misrepresentation of AH&D records and/or documents.**
- Dishonesty, falsification, or misrepresentation on AH&D documents, including but not limited to, employment application, employee records/file, Paid Time Off request, mileage reimbursement, training request, medical or paid family leave documentation.
- Falsification of employee automated timecard system and/or the falsification of another employees automated timecard system.
- Excessive tardiness, absenteeism, or pattern of absences. Unreasonable periods away from the workplace during scheduled shifts.
- Lounging, reclining and/or sleeping while on paid AH&D work time.
- Any action, which constitutes harassment, directed toward a director, supervisor or designee.
- Interfering with another employee's job performance, restricting output, or encouraging others to interfere with or restrict output of employee's job performance.
- Destruction or damage of any AH&D and/or resident owned property. Failure to report destruction or damage to any AH&D and/or resident owned property.
- Creating or contributing to any type of unsafe behavior or acts, "horseplay".
- Possession, distribution, intent to sell, sale, transfer or use of alcohol or illegal drugs in the workplace, while on duty, or while operating AH&D vehicles and/or transporting clients /residents.
- Working under the influence of alcohol, illegal drugs, marijuana (cannabis) and/or prescription medication that has the potential to create negligent and/or hazardous behavior.
- Smoking (tobacco and/or e-cigarette) outside of AH&D identified and approved smoking designated areas.
- Possession of weapons (i.e., knives, guns, or other firearms) on work premises or while performing AD&D work are prohibited.
- Any unethical conduct or conviction of a crime (misdemeanor or felony) that poses a risk to the program, a client, tenant, property owner, resident, and/or coworker. (A criminal conviction does not mean automatic termination. Consideration will be given to how the conviction relates to the specific requirements and conditions of the position and the implications for the safety and welfare of employees and clients of AH&D as required by New York law.)
- Dangerous and unauthorized materials such as explosives, flammable devices and/or instruments, and substances with potential to produce significant injury to individuals or property are prohibited in the workplace or while performing AD&D work off premises.
- Sexual harassment, unwelcoming behavior, other forms of harassment, discrimination, or retaliatory activity.
- Solicitation during scheduled shifts, on or in AH&D premises, selling merchandise, or collecting money for personal profit or gain.

- Financial (monetary, donations, or bartering) transactions or acceptance of gifts between clients, tenants, property owners, residents, Board Members, vendors or external constituents.
- Political activities on AH&D premises, use of AH&D name/programs without written prior approval and political activities that have the potential of reflecting unfavorably on AH&D.
- Unauthorized or prolonged use of AH&D phones other than for legitimate business need, dissemination of inappropriate material via AH&D email, scanners, and/or bulletin boards.
- **Negligence or improper conduct in the performance of assigned duties.**
- Being insubordinate, threatening, intimidating, disrespectful or assaulting a supervisor, co-worker, client, tenant, property owner, external constituent or vendor.
- Creating or contributing to unsanitary conditions.
- Violation of health or safety rules.
- Violation of any other rule or policy contained in this Personnel Policy Manual.

Employees must report any suspected violations of AD&D's policies to their supervisor or Human Resources. AD&D may investigate such reports, and employees must cooperate with such investigations. Violations of any AD&D policies may result in disciplinary action, which may consist of a verbal or written warning, suspension, or termination, depending upon the nature of the offense.

It is AD&D policy and intention to apply these rules in compliance with all applicable laws and regulations, including the National Labor Relations Act and the federal and New York discrimination laws.

Whistleblower Policy

New York not-for-profit corporations are subject to whistleblower protections found in New York Not-for-Profit Corporation Law Section 715-b and New York Labor Law Section 740. A copy of the Whistleblower Policy compliant with these two specific statutes can be found in Appendix A of this Personnel Policy Manual.

A whistleblower as defined by this policy is an employee of AH&D who reports an activity that the employee considers to be illegal or dishonest to one or more of the parties specified in this policy. The whistleblower is not responsible for investigating the activity or for determining fault or corrective measures; appropriate management officials are charged with these responsibilities.

Examples of illegal or dishonest activities are violations of federal, state or local laws; billing for services not performed or for goods not delivered; and other fraudulent financial reporting.

If an employee has knowledge of or a concern of illegal or dishonest fraudulent activity, the employee is to contact their immediate program director, program supervisor or the human resources officer.

The employee must exercise sound judgment to avoid baseless allegations. An employee who intentionally files a false report of wrongdoing will be subject to discipline up to and including termination.

Whistleblower protections are provided in two important areas --- confidentiality and against retaliation. Insofar as possible, the confidentiality of the whistleblower will be maintained. However, identity may have to be disclosed to conduct a thorough investigation, to comply with the law and to provide accused individuals their legal rights of defense.

AH&D will not retaliate against a whistleblower. This includes, but is not limited to, protection from retaliation in the form of an adverse employment action such as termination, compensation decreases, or poor work assignments and threats of physical harm.

Any whistleblower who believes they are being retaliated against must contact human resources immediately. The right of a whistleblower for protection against retaliation does not include immunity for any personal wrongdoing that is alleged and investigated.

Defend Trade Secrets Act (DTSA) Compliance: “Immunity from Liability for Confidential Disclosure of a Trade Secret to the Government or in a Court Filing:

(1) Immunity—An individual shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that—

- **(A)** is made
 - i) in confidence to a federal, state or local government official, either directly or indirectly, or to an attorney; and
 - ii) solely for the purpose of reporting or investigating a suspected violation of law; **or**
- **(B)** is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

(2) Use of Trade Secret Information in Anti-Retaliation Lawsuit—An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding,

if the individual —

- **(A)** files any document containing the trade secret under seal; and
- **(B)** does not disclose the trade secret, except pursuant to court order.”

All reports of illegal and dishonest activities will be promptly submitted to the human resources officer who is responsible for investigating and coordinating corrective action.

Federal False Claims Act (FCA)

Any “claim” is any request or demand, whether under a contract or otherwise, for money or property that:

- (i) Is presented to an officer, employee or agent of the state or a local government; or

Any “*person*” (any natural person, partnership, corporation, association or any other legal entity or individual other than the state or local government) who commits the following acts is liable to the United States Government for a civil penalty of not less than \$5,500 and not more than \$11,000, per violation. A statute of limitations of six years. Once the federal government declines and the case is [unsealed](#), the whistleblower cannot withdraw their case under seal.

“Knowing or Knowingly”

- (a) means that a “*person*”
 - (i) has actual knowledge of the information;
 - (ii) acts in deliberate ignorance of the truth or falsity of the information;
 - (iii) or acts in reckless disregard of the truth or falsity of the information; and

- (b) require no proof of specific intent to defraud, provided, however that actus occurring by mistake or as a result of mere negligence are not covered by this article.

“*Qui tam*” is a provision of the False Claims Act (FCA), allowing whistleblowers to report fraud on behalf of the US government and receive a share of the recovered funds. Fraud includes abuse of disaster relief loans, over billing, kickbacks, false statements, and upcoding in healthcare, among many others.

New York State Federal False Claims Act (FCA)

NY False Claims Act (State Finance Law, §§187-194) The New York FCA (False Claims Act) although largely identical to the federal FCA, it imposes penalties and fines on individuals and entities that file false or fraudulent claims for payment from any state or local government, including health care programs such as Medicaid.

Social Services Law §145-b False Statements is a violation to knowingly obtain or attempt to obtain payment for items or services furnished under any Social Services program, including Medicaid, by use of a false statement, deliberate concealment or other fraudulent scheme or device.

Any “person” that:

- Knowingly presents, or causes to be presented a false or fraudulent claim for payment or approval;
- Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;
- Conspires to defraud the government by getting a false or fraudulent claim paid or approved by the government;
- Has possession, custody, or control of property or money used, or to be used, by the federal, state or local government and knowing deliver, or causes to be delivered, less than all of that money or property;
- Falsely certifies the type or amount of property to be used by the government.
- Certifying receipt of property on a document without completely knowing that the information is true.
- Knowingly buying government property from an unauthorized officer of the government.
- Knowingly makes, uses or causes 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.

NYS FCA Penalties:

- Allows for three times the damages (two times the damages for voluntary and immediate self-reporting of fraud) and civil penalties of \$6,000 to \$12,000 per claim in addition to attorney’s fees and costs.
- Repeat violations occur within 5 years, a penalty up to \$7,500 per violation may be imposed if they involve more serious violations of Medicaid rules, billing for services not rendered or providing excessive services.
- Does not exclude tax fraud like the federal FCA does. It should be noted, however, that the New York FCA can be used for tax fraud only if the defendant has “net income or sales” of \$1 million or more and damages as pleaded are greater than \$350,000.
- Includes a ten-year statute of limitations, and states that amendments apply retroactively to claims, records and statements.
- Allows for a whistleblower and the New York qui tam lawyer(s) to withdraw their case in secret if the government [declines to intervene](#).

- New York qui tam lawyers should note the anti-retaliation protections in the New York FCA are stronger than the protections in the federal FCA. The anti-retaliation protections in the New York FCA cover current and former employees, agents and contractors, and the person does not have to file a qui tam lawsuit to be protected. The New York FCA also contains anti-blacklisting provisions, a ten-day statute of limitations and damages are two times the pay plus interest.