

CARE MEMBER HANDBOOK



archcare

The Continuing Care Community
of the Archdiocese of New York

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A. INTRODUCTION

WELCOME MESSAGE FROM THE PRESIDENT & CHIEF EXECUTIVE OFFICER OF ARCHCARE

Dear Care Member:

Welcome to ArchCare, the Continuing Care Community of the Archdiocese of New York.

ArchCare is a non-profit healthcare organization, comprised of several residential care facilities and managed care and community programs, helping to carry out the Roman Catholic mission of serving the sick and the frail in New York. We are dedicated to providing personalized and comprehensive care to individuals who are too ill or vulnerable to fully care for themselves.

Having devoted my professional life in service to people confronting the challenges of disability and frailty, I continue to be touched every day by the level of care, commitment and compassion we see in our specially trained care members here at ArchCare. Our goal is to bring daily purpose, everlasting peace and spiritual harmony to the people for whom we are privileged to care.

Working at ArchCare is an opportunity to give back to your community in a compassionate and nurturing environment where you will enjoy the satisfaction of making a difference in someone's life.

Again, welcome to ArchCare. I hope you will find it a fulfilling, rewarding experience.

Sincerely,

Scott LaRue
President & Chief Executive Officer

A. INTRODUCTION

CARE MEMBERS AND C.O.R.E.

Care members. *noun*

ArchCare’s staff who carry out our Mission, Vision, and Values - bringing each to life every day.

Our Mission is Care.

You are at the “C.O.R.E.” of our Mission.

You are a care member.

In 2014, “care member” was chosen to replace “employee” when describing those who work for ArchCare. Regardless of your role, all care members embody the spirit of caring for those who are “unable to fully care for themselves.” (ArchCare Mission Statement)

Care members carry out ArchCare’s Mission, Vision and Values, bringing each to life every day. Additionally, as a care member, you are a member of the ArchCare community, which values Justice, Inclusiveness, Respect, Integrity, Benevolence, Humility and Spirituality. Care members represent the high quality of care that is given throughout the ArchCare community on a daily basis.

To enhance your service with us, ArchCare’s C.O.R.E. program is focused on engaging care members through training and education, recognition, wellness, work-life balance, communication and celebration. C.O.R.E. equally focuses on exceeding the expectations of our customers. Care members work to provide high quality customer service throughout ArchCare on a daily basis.



C.O.R.E. is an acronym for the following goals.

- C. Communication** – Streamlining the flow of information across ArchCare
- O. Organizational Wellness** – Helping care members live healthier, less stressful lives at work and at home
- R. Recognition** – Developing programs for recognizing care members' exceptional work
- E. Education and Learning** – Enhancing and standardizing educational programs system-wide

Throughout your time at ArchCare, our goal is to recognize you and celebrate your contributions. You are encouraged to get involved in your program-specific C.O.R.E. group. Contact your Human Resources Director for more information.



FOREWARD

Welcome to ArchCare.

Whether you have just joined our team or have been at ArchCare for a while, we are confident that you will find ArchCare a dynamic and rewarding place in which to work and we look forward to a productive and successful relationship. We consider the care members of ArchCare to be one of its most valuable resources. This Care Member Handbook ("Handbook") has been written to serve as the guide for the employer/care member relationship.

There are several things that are important to keep in mind about this Handbook. If you are a unionized care member please be aware that the provisions of the collective bargaining agreement take precedence over applicable policies and procedures of this Handbook and govern your employment relationship with ArchCare.

The Handbook contains only general information and guidelines. It is not intended to be comprehensive or to address all the possible applications of, or exceptions to, the general policies and procedures described. For that reason, if you have any questions concerning eligibility for a particular benefit, or the applicability of a policy or practice to you, you should address your specific questions to your supervisor or your local Human Resources office. Neither this Handbook, nor any other ArchCare document, confers any contractual right, either express or implied, including, but not limited to, rights to remain employed. Nor does it guarantee any fixed terms and conditions of your employment. Your employment is not for any specific time and may be terminated at will by ArchCare or you may resign for any reason at any time.

The procedures, practices, policies and benefits described here may be modified or discontinued from time to time. All revisions and additions to the Care Member Handbook will be approved by the Vice President of Human Resources, the Vice President of Compliance and the President and CEO. We will make every effort to inform you of any changes as they occur.

We hope that all care members have a long-term relationship with us.

Respectfully,

VSP, Chief Human Resources Officer

Revised 2024

MISSION STATEMENT

The mission of ArchCare is to foster and provide faith-based holistic care to frail and vulnerable people unable to fully care for themselves. Through shared commitments, ArchCare seeks to improve the quality of the lives of those individuals and their families.

GUIDING PRINCIPLES

In addition to the mission statement, ArchCare expects all care members to use these guiding principles throughout their employment.

Justice: We live and work as members of a community, and all members of our community have rights that are coupled with responsibilities.

Inclusiveness: While we are unified as one community, each of us is valued for our unique heritage and defined only by our eagerness to contribute to the best of our abilities.

Respect: Each of us is as important as any other – whether resident, family, friend, volunteer or care member – and we must respect each other if we are to receive respect.

Integrity: To be a truly caring community, we must speak and act with total honesty, without concern for the consequences of our truthfulness.

Benevolence: We recognize that those with the greatest needs often have the least resources, and we will provide the same care to the disenfranchised that we do to those who have been more fortunate.

Humility: While subscribing to high ideals, we will recognize our individual and collective limits. Only then can we continue to grow towards who and what we so earnestly strive to be.

Spirituality: While we take pride in following the traditions of the Roman Catholic Church, we seek to serve people of all beliefs equally and to fulfill each individual's spiritual needs by respecting their distinct beliefs.

EQUAL EMPLOYMENT OPPORTUNITY

Equal Employment Opportunity has been, and will continue to be, a fundamental principle at ArchCare, where employment is based upon personal capabilities and qualifications without discrimination because of actual or perceived race, creed, color, age, sex, gender, marital status, national origin, religion, disability, citizenship status, partnership status, sexual orientation, status as a disabled or Vietnam-era veteran or any other protected characteristic as established by law.

ArchCare endorses and complies with the Americans with Disabilities Act and local and state laws prohibiting discrimination in employment against persons with disabilities. Specifically, ArchCare will not discriminate against any qualified applicant or care member with a covered disability in hiring, promotion, discharge, wages, job training, fringe benefits or other aspects of employment. Moreover, ArchCare will provide reasonable accommodation to qualified applicants and care members with disabilities provided that the accommodation does not impose an undue hardship on operations. ArchCare also supports and complies with all regulatory requirements, which prohibits any discrimination or harassment.

This Equal Employment Opportunity Statement applies to all policies and procedures related to recruitment and hiring, compensation, benefits, termination and all other terms and conditions of employment. The Human Resources Department has overall responsibility for the administration of this policy and maintains reporting and monitoring procedures. Care members' questions or concerns should be referred to the Vice President of Human Resources or his/her designee.

Appropriate disciplinary action will be taken against any care member willfully violating this policy, up to and including termination of employment.

HARASSMENT FREE WORKPLACE

All ArchCare care members have a right to work in an environment free from all forms of discrimination and conduct which can be considered harassing, coercive or disruptive. Consistent with ArchCare's respect for the rights and dignity of each care member, harassment based on actual or perceived race, creed, color, age, gender, marital status, national origin, religion, disability, citizenship status, partnership status, sexual orientation, status as a disabled or Vietnam-era veteran or any other protected characteristic as established by law will not be sanctioned nor tolerated. All care members should, therefore, be aware of the following:

1. Sexual harassment is strictly prohibited. Sexual harassment has been defined by government regulation as "unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature...when submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment;... [when] submission to or rejection of such conduct...is used as the basis for employment decisions affecting such individual; or...such conduct has the purpose or effect of unreasonably interfering with the individual's work performance or creating an intimidating, hostile or offensive work environment."
2. Harassment on the basis of any protected characteristic is also strictly prohibited. Under this policy, harassment is verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of actual or perceived race, creed, color, age, gender, marital status, national origin, religion, disability, citizenship status, partnership status, sexual orientation, status as a disabled or Vietnam-era veteran or any other protected characteristic as established by law or that of his/her relatives, friends or associates, and that:
 - (i) has the purpose or effect of creating an intimidating, hostile, or offensive work environment;

- (ii) has the purpose or effect of unreasonably interfering with an individual's work performance;
- (iii) otherwise adversely affects an individual's employment.

Harassing conduct includes, but is not limited to: epithets, slurs or negative stereotyping; threatening, intimidating, or hostile acts; and written or graphic material that denigrates or shows hostility or aversion toward an individual or group and that is placed on walls or elsewhere on the employer's premises or circulated in the workplace.

Any individual found to have engaged in sexual or any form of harassment will be disciplined as appropriate, up to and including discharge. Any care member who believes that he or she has been subjected to sexual or any other form of harassment by anyone at ArchCare or by any person who does business with ArchCare, should, and is encouraged to, bring the matter to the attention of his/her Supervisor, Department Head, Vice President of Compliance or the Vice President of Human Resources or his/her designee.

A prompt and thorough investigation of the alleged incident will be conducted to the extent possible and appropriate corrective action will be taken if warranted. To the extent consistent with adequate investigation and appropriate corrective action, any complaints of harassment will be treated as confidential.

ArchCare will not in any way retaliate against a care member, applicant or former care member who, in good faith, makes a complaint or report of harassment or participates in the investigation of such a complaint or report. Retaliation against any individual for reporting a claim of harassment in good faith or cooperating in the investigation of a complaint will not be tolerated and anyone violating this policy will also be subject to appropriate discipline.

WORKPLACE VIOLENCE

ArchCare is committed to providing a healthy and safe work environment and prohibits any form of workplace violence. Violence is any act of aggression, verbal assault, physical assault or threat in the workplace.

Acts of workplace violence will not be tolerated. ArchCare will provide all care members with orientation in appropriate approaches to managing violence and abusive behavior, including the use of the Grievance Procedure described in this Handbook.

If you believe you are a victim of workplace violence, please contact your Supervisor, Department Head, Corporate Vice President of Compliance or your Human Resources representative immediately.

CONFLICT OF INTEREST AND OUTSIDE EMPLOYMENT

Care members must not engage in activities which will conflict with business interests, compromise their judgment to conduct themselves in the best interests of the organization, or impede their job performance at ArchCare.

Care members are not permitted to also be employed by ArchCare's residents/patients/members or their families to provide services at ArchCare.

Care members are hired and continue in ArchCare's employ with the understanding that ArchCare is their primary employer and that other employment or commercial involvement which is in conflict with the business interests of ArchCare is strictly prohibited.

If you have any questions about the application of this policy you should contact the Corporate Compliance Office or the Human Resources Department immediately.

Any breach of the conflict of interest policies may result in appropriate disciplinary action, up to and including immediate discharge.

CONFIDENTIAL INFORMATION

As required by the Health Insurance Portability and Accountability Act (HIPAA) regulations and Federal and New York State Law, information about residents/patients/members and their illnesses are private and must be kept confidential. A resident's/patient's/member's Protected Health Information (PHI) should never be discussed with care members not directly concerned with the resident's/patient's/member's care and treatment, and never in public areas.

In addition, all medical records, financial information and any information relating to ArchCare's business practices are confidential. Care members must treat all matters accordingly. No resident/patient/member-related information, including but not limited to: documents, files, records, computer files or similar materials (except in the ordinary course of performing duties on behalf of ArchCare) may be removed from ArchCare's premises without management approval. Additionally, the contents of ArchCare's records or information otherwise obtained in regard to business may not be disclosed to anyone, except where required for a business purpose.

Violations:

Any care member who violates this policy will be subject to appropriate disciplinary action up to and including termination of employment or contract with ArchCare. Anyone who knows or has reason to believe that another person has violated this policy should report the matter promptly to his or her supervisor or ArchCare's Vice President of Compliance. Any attempt to retaliate against a person for reporting a violation of this policy will itself be considered a violation of this policy.

HIPAA provides civil penalties for failure to comply with the privacy regulations. The United States Department of Health and Human Services may impose civil monetary penalties of up to \$100 for each violation (capped at \$25,000 per person/entity per year for each standard violated). In addition, HIPAA provides for criminal penalties for intentionally obtaining or disclosing PHI in violation of the privacy regulations. Criminal sanctions may be imposed up to \$250,000 and 10 years in prison.

B. EMPLOYMENT

HIRING RELATIVES AND FRIENDS

It is ArchCare's policy to hire the best-qualified care members available for all jobs. Referrals of friends and/or relatives of current care members are welcome. However, relatives and friends cannot be hired into positions in which they will be supervised by a relative or friend.

Relatives and friends are defined as spouses, parents, children, siblings, grandparents, grandchildren, aunts, uncles, nieces, nephews, in-laws or close friends who are more than business associates.

ArchCare retains the right to arrange the job assignments of care members upon hire or promotion to avoid a prohibited reporting relationship between relatives and friends. The Human Resources department reviews and makes determinations regarding the employment of relations and friends.

CARE MEMBER CATEGORIES

Based on the conditions of employment, ArchCare care members fall into the following categories:

Exempt:

A care member who is employed in a managerial, supervisory, professional, computer or outside sales position which is exempt from the U.S. Fair Labor

Standards Act overtime provisions and is not covered by collective bargaining agreement.

Non-Exempt:

A care member who is not an exempt care member and is eligible for the overtime provisions of the U.S. Fair Labor Standards Act.

Full-time:

A care member who is normally scheduled to work thirty-five (35), thirty-seven and one-half (37.5) or forty (40) hours per week (dependent on job classification). Full-time care members are eligible for benefits.

Part-time:

A care member who is normally scheduled to work less than full-time hours per week. As per policy, a part-time care member may be eligible for benefits depending upon the number of hours he/she is scheduled to work.

Temporary:

A care member hired for a specific project or period of time. Temporary care members are not eligible for certain benefits. They may be union or non-union care members.

Non-union temporary care members are entitled to the following benefits:

- holiday pay in the same manner as regular non-union care members;
- if retained beyond six (6) months, accrual of vacation and sick leave retroactive to the first day of employment;
- any other legally required benefits.

Per Diem:

Per Diems working in job titles covered by an 1199 collective bargaining agreement are non-union unless they work in excess of sixteen (16) shifts in any thirteen (13) week period at which time they become 1199 members.

Per Diem RN's in Terence Cardinal Cooke Health Care Center are members of the New York State Nurses Association. Per Diem Security Officers and Garage Attendants at Terence Cardinal Cooke Health Care Center are members of Local 272.

All other Per Diems are non-union. As per policy, Per Diems are only eligible for legally required benefits.

Fee-for-service:

Fee-for-service care members are hired and compensated on a per-home care visit basis.

HOURS OF WORK

Care members are required to be in their assigned department/unit at the beginning of their shifts and ready to work. Work schedules which rotate days must have schedules posted. It is the care member's responsibility to review this schedule and report to work when scheduled. Care members are expected to work the duration of their shifts.

SHIFT ASSIGNMENTS

New care members may indicate their preference of shift, and when possible, the requested preference will be honored. No shift assignment is to be considered permanent. A Supervisor may change work assignments, floor assignments and shifts as openings and work demands require. Every effort will be made to give as much advance notice when a shift change needs to be made.

Care members are required to be at their workplace at the beginning of their shift and are expected to remain there until the end of their shift. Care members should not be on the premises when off duty without proper authorization.

ORIENTATION AND IN-SERVICE TRAINING

In order to familiarize care members with the organization, all new care members are required to attend Orientation classes as scheduled. All care members must attend in-service classes on an annual basis. Supervisors or

Department Heads will schedule and notify care members regarding the classes.

JOB DESCRIPTIONS

In order to set clear expectations about job duties, a job description will be created for each position. Each care member will receive a job description for his/her position. Care members will be responsible for meeting the requirements and expectations in the job descriptions.

Job descriptions may be revised periodically. After the revised job description is approved by the Human Resources department, the Department Head or Supervisor will discuss it with the affected care members.

C. BENEFITS

CARE MEMBER BENEFITS

It is the policy of ArchCare to provide a comprehensive package of care member benefits. A summary of benefits is given to all new care members and can be obtained from the Human Resources department. All policies regarding benefits are subject to change.

Temporary care members are not eligible for non-statutory benefits. Temporary care members who are changed to regular status begin coverage the 1st day of the month following the change to regular status.

Union care members should refer to their current collective bargaining agreement.

VACATION TIME

Annual vacation entitlement is determined by job position and length of service. A complete list of vacation entitlements by job titles can be found in the Human Resources office.

Vacation is accrued on a per pay period basis. A care member is allowed to use vacation time after 6 months of employment.

For non-union care members, please see your local Human Resources office for details regarding vacation “carry-over.” For all others, vacation time not used by the end of the vacation year is forfeited.

All care members can request to be advanced no more than 2 vacation days, one time each year.

HOLIDAY AND PERSONAL TIME

Personal time must be requested and approved 30 days in advance except in an emergency and at the discretion of the manager. Holiday time must be used within 60 days after a holiday. Any holiday time not used during this time frame will be forfeited.

All personal days must be taken by January 31 of the following year.

A new care member will be able to take personal time after 3 months of employment.

Care members hired after January 1, 2009 will receive 9 holidays as follows:

1. New Year’s Day
2. Dr. Martin Luther King Jr. Day
3. Presidents’ Day

4. Good Friday
5. Memorial Day
6. Independence Day
7. Labor Day
8. Thanksgiving Day
9. Christmas Day

Non-exempt care members will receive time and one-half regular pay for working on a holiday, and will receive an alternative day off, to be taken within 60 days after the holiday. Exempt care members will receive an alternative day off for working on a holiday, to be taken within 60 days after the holiday. Holiday time not used during this time frame will be forfeited. In addition to the 9 holidays above, care members hired after January 1, 2009 will receive 4 personal days. A schedule of each year's holidays is published annually by the Human Resources department.

BEREAVEMENT LEAVE

In the unfortunate event of a death in the immediate family, a leave of absence of up to 3 days with pay will be granted to all full-time care members who have completed their Initial Probationary Period.

Part-time care members who have completed their Initial Probationary Period will be paid up to 3 scheduled work days on a prorated basis to the extent the care member is scheduled to work 3 calendar days in a row. For this purpose, immediate family is defined as spouse, children, parents, parents-in-law, siblings, grandparents and grandchildren.

Such days must be taken consecutively and are to be taken within a reasonable time following the death or funeral/memorial service.

Care members should make their Supervisor aware of their situation in writing and provide proof of death and family relationship, if requested.

DIRECT DEPOSIT

All care members have the option of direct deposit of paychecks. Authorization forms are available in the Human Resources department.

Payroll will process at least one trial pay period to test the bank routing number before the direct deposit set-up is complete.

JURY DUTY

Jury duty leave with pay will be granted to any full-time or part-time care member who has been notified (not volunteered) to serve for state or federal grand jury duty.

When care members receive notices for jury duty, they should immediately notify their Department Head. Department Heads should be given a copy of the notice to serve.

If the jury duty falls at a time when the care member cannot be away from work, the court may allow the care member to choose a more convenient time to serve if he/she makes a request in accordance with the court's procedures.

Full-time and part-time care members will be paid their regular wages minus any jury duty pay for the length of the trial or for the length of the service. Jury duty pay received for days of service that are not work days can be kept by the care member.

Care members who work on weekends are expected to maintain their weekend work obligations.

Upon completion of jury duty or as requested, a care member must notify his/her Department Head and submit signed Certificate of Jury Service

indicating the number of days served. Failure to provide this documentation may delay or prevent pay.

MILITARY LEAVE

A care member who is a member of the United States Army, Navy, Air Force, Marines, Coast Guard, National Guard, Reserves or Public Health Service will, where a specified period of active or reserve duty is mandatory, be granted a leave of absence in accordance with applicable law.

Employment discrimination in connection with all terms and conditions of employment, including hiring, promotion, re-employment, termination, and benefits, because of past, current, or future military obligations is prohibited.

Care members who are on a military leave continue to accumulate seniority. Insurance coverage (medical, dental, optical, short-term disability, long-term disability and life insurance) is discontinued while care members are on a military leave.

Care members are eligible to be paid all accrued but unused vacation, personal and holiday time upon the start of the military leave. Accruals of sick, vacation, personal and holiday will end upon the start of the military leave.

A care member's job is guaranteed in compliance with USERRA. USERRA requires employers to allow up to 5 years of leave to a soldier who is on military duty, performs that duty satisfactorily and requests his/her job back within the time limits provided by the statute. The soldier must be re-employed without regard to whether the military duty was voluntary or involuntary.

Military leave will be an unpaid leave.

Upon receipt of orders for active or reserve duty, a care member should immediately notify his/her Department Head as well as the Human Resources department and must submit a copy of the orders to the Department Head and to the Human Resources department.

SICK TIME

Sick time is earned by regular full-time care members each pay period at the rate of one day per month. This rate is prorated for benefits eligible part-time care members. For non-union care members, the maximum accumulation is 120 days. Newly hired non-union, regular full-time and part-time care members are eligible to use paid sick time after 3 months of employment.

Please refer to the Sick Time Policy regarding sick time for per-diem, temporary and fee for service care members.

Non-union care members will retain their existing sick time bank when transferring among ArchCare entities.

Care members are not able to cash out accrued, unused sick time. Only care members hired before January 1, 2009 at Carmel Richmond, Ferncliff and San Vicente de Paul will continue the current sick cash-out practice or union care members that have this specified in the collective bargaining agreement.

Care members who expect to be late or absent must notify their supervisors at least 1 hour before their scheduled starting time. Care members must call each day of absence, at least 1 hour before the scheduled starting time until a return date has been established. A care member who fails to contact his/her immediate supervisor is considered to have voluntarily resigned after 3 days of absence.



If a care member fails to report for duty and has not called in, arrangements for a replacement will be made. If the care member then arrives late, after a replacement has been arranged for, he/she shall be sent home.

When calling in sick, the care member does not need to disclose the specific medical diagnosis or condition.

Care members who are out sick for 3 consecutive work days are required to provide their supervisor with clearance from their personal physician. Without this clearance, care members are not permitted to return to work. If the absence is not due to a work-related illness/injury, once a care member is out sick for 5 consecutive work days he/she must also notify Human Resources so that a short-term disability benefits claim form can be sent for completion and processing. Failure to do so may jeopardize salary continuance benefits.

If an absence is due to a work-related illness/injury, care members must inform their supervisor and submit all completed documentation to their supervisor and their local Human Resources office. Failure to do so may jeopardize benefits.

Care members returning to work from an illness/injury absence are required to provide the facility with health clearance from their physician and must be cleared through Health Service (when there is a HS facility on the premises). Without this clearance, care members are not permitted to return to work. A copy of the clearance must be submitted to the local Human Resources office. Advance notice is expected from the care member for the purpose of adequate planning. In other words, a returning care member must contact his/her supervisor days prior to the return date.

Care members will continue to accrue time (sick, vacation, personal and holiday) while on paid leave. Accruals of sick, vacation, personal and holiday time end immediately upon the beginning of the unpaid portion of a leave.

WORKERS' COMPENSATION

An injury or an illness occurring on the job must be immediately reported to a care member's supervisor. The supervisor must complete a Care Member Accident/Incident Report.

Workers' Compensation Insurance provides payment of medical expenses as well as partial salary continuation. The amount of benefits payable, the effective date of payments and the duration of the payment period depend on the nature and the seriousness of the injury or illness.

Work-related illness or accidents must be reported immediately. Failure to follow this procedure may jeopardize the right to benefits.

Care members continue to accrue time (sick, vacation, personal and holiday) while on paid leave. Accruals of sick, vacation, personal and holiday will end immediately upon the beginning of the unpaid portion of a leave.

Non-union care members whose leave period exceeds 6 months will be terminated.

Care members returning to work from an illness/injury absence are required to provide ArchCare with health clearance from their physician and must be cleared through Health Service (when there is a HS facility on the premises). Without this clearance, care members are not permitted to return to work. A copy of the clearance must be submitted to the local Human Resources office. Advance notice to the supervisor is expected from the care member for the purpose of adequate planning.

SHORT TERM DISABILITY

The short-term disability plan is a benefit which provides partial pay for care members unable to work due to non-work-related illness, injury or disability

after an absence of more than 7 consecutive calendar days. Benefits begin on the 8th day of disability and continue for related absences up to a maximum of 26 weeks. Care members should contact the Human Resources department for additional details.

Union care members should refer to their collective bargaining agreement for specific benefit information.

Care members will continue to accrue time (sick, vacation, personal and holiday) while on paid leave. Accruals of sick, vacation, personal and holiday time will end immediately upon the beginning of the unpaid portion of a leave.

Care members whose leave period exceeds 6 months will be terminated.

FAMILY AND MEDICAL LEAVE ACT (“FMLA”)

The Family and Medical Leave Act of 1993 (FMLA) entitles care members to a maximum of 12 workweeks of leave during any 12 month period for the following circumstances:

1. The inability to work due to the care member’s own serious health condition;
2. To care for a qualified family member (child, parent or spouse) with a serious health condition;
3. To give birth;
4. To adopt a child or for the foster care placement of a child if the leave is taken within 12 months of the adoption or foster care placement;
5. To spend time with a spouse, son, daughter or parent who is on active duty or has been notified of an impending call to active duty status, in support of a contingency operation;
6. To care for a spouse, son, daughter, parent or next of kin of a covered care member who is recovering from a serious illness or injury



sustained in the line of duty on active duty. This type of leave entitles the care member up to 26 weeks of leave in a single 12 month period to care for the service member. This military caregiver leave is available during “a single 12-month period” during which a care member is entitled to a combined total of 26 weeks of all types of FMLA leave.

Eligibility is extended to all care members who have been employed for a period of 12 months and have worked at least 1,250 hours during the 12 months immediately preceding the requested leave. Care members who are not entitled to the FMLA protection may be eligible for a leave under ArchCare’s leave policy.

A “serious health condition” is an injury, illness, impairment or physical or mental condition that involves inpatient care or continuing treatment by a health care provider.

A detailed policy is available in your local Human Resources office.

PERSONAL LEAVE

A Personal Leave of Absence is intended to meet a situation not covered by FMLA that temporarily prevents a care member from working. Care members who have a minimum of 1 year of service are eligible for personal leaves not exceeding 30 days.

Seniority does not accrue during personal leaves. Benefit coverage ends on the 1st of the following month following the start of the leave. Care members will have the opportunity of continuing coverage by paying the full monthly premiums.

Care members are required to use their accrued time (vacation, personal days and holidays) while on a personal leave. Accruals of time will be discontinued immediately upon the beginning of the unpaid period.

MARRIAGE LEAVE

A full-time care member with at least 6 months of employment is entitled to 3 days paid leave as a result of his/her marriage. Marriage leave must be taken within 30 days of the marriage upon request of the care member.

PARENTAL LEAVE

Full-time care members are eligible for 1 day off with pay in the event a spouse gives birth or a child is adopted into the family. Part-time care members are entitled to prorated payment. Eligibility starts after 6 months of employment.

Parental leave must be taken, subject to the Department Head's approval, within 30 days from the birth or adoption of a child.

TUITION REIMBURSEMENT

Tuition Reimbursement is available for full-time, non-union, care members to pursue educational programs that will relate to and assist them in their present job titles. The tuition reimbursement amount will be up to \$2,000.00 per semester and will not exceed \$4,000.00 per year for any classes taken in an accredited college, university or certificate program. The course(s) must be taken for credit. The reimbursable amount is less any Financial Aid received by the care member. The reimbursable amount is for tuition cost only (cost per credit), not for student fees or books.

C. COMPENSATION

COMPENSATION GOALS AND PHILOSOPHY

Salary ranges or job rates are established for all positions. These rates and ranges strive to be internally equitable, i.e., fair when compared with the ranges established for other positions, as well as competitive when compared with the rates paid by other employers for comparable jobs.

Every effort is made to ensure that each care member whose performance is acceptable receives a rate of pay that falls within the pay range that has been established for his or her job. The position of each care member's wage or salary within the range may depend on, among other factors, the care member's job performance, general seniority, financial status of the facility and market conditions.

SALARY INCREASES AND SALARY ADJUSTMENTS

Promotional Increases

Promotional increases may be given when an individual is promoted to a job with a higher salary range.

Merit increases

Merit increases for exceptional performance may be given upon approval of the Department Head, the Executive Director, Vice President of Human Resources and the Chief Operating Officer.

General Salary Increases

General salary increases are usually given to care members and may reflect the cost of living and the organization's finances. These increases are taken under consideration annually by the President and Chief Executive Officer.

Competitive Market Adjustment

Salaries may be adjusted if it is determined that a current salary is not competitive in the local labor market.

A care member permanently reassigned to a lower pay rated position will have his/her salary adjusted to the lower level pay rate.

PERFORMANCE EVALUATIONS

The performance evaluation program at ArchCare is designed to assess a care member's ability to meet certain performance standards of the job description for his/her position. The program facilitates a means of communication between managers/supervisors and those being evaluated to correct performance deficiencies, acknowledge and reinforce outstanding performance, and promote individual performance improvement plans, when necessary.

The performance evaluation is an aid in providing feedback to care members regarding current performance, identifying weaknesses and working out a plan for improvement, making decisions about transfers, promotions, and dismissals, providing a factual basis for wage adjustments, and acknowledging and reinforcing outstanding performance.

Care members will be evaluated:

- At the end of their orientation period;
- Annually;
- At the request of a supervisor or department head as a means of correcting job competency; and
- At the supervisor or department head's discretion as a means of performance management.

USE OF A COMPANY ISSUED BLACKBERRY AND OTHER COMMUNICATION DEVICES

Communication is vital to the operation of ArchCare. To facilitate communication, Blackberries and other communication devices are made available to certain management care member and selected non-management care member. Communicating using these devices does not constitute time worked for compensation purposes.

ATTENDANCE POLICIES AND PROCEDURES

Excessive absenteeism and/or lateness cannot be tolerated and subjects care members to disciplinary action.

Exempt (salaried) and non-exempt (hourly) care members must swipe in at their designated clock immediately prior to their work shifts. They are expected to be in their work areas, ready to work, at the scheduled start of their shifts.

Care members are expected to work until the end of their shift and to return from breaks and meal periods on time. Non-exempt care members must swipe out at their designated clock when they leave.

If non-exempt care members forget to punch in or out, they must notify their supervisors no later than the day after the error. If non-exempt care members fail to notify their supervisors promptly, they may have to wait until the next payroll to receive pay for the time in question.

It is a violation of ArchCare policy for any care member to swipe in or out for anyone other than him/herself. Such a violation is considered theft of time and will result in disciplinary action, up to and including discharge from

employment, for all care members involved. No care member may allow his/her ID card to be used by another care member for any purpose.

Physician's Note

All care members must present a physician's note for absences of 3 or more consecutive days. The physician's note must give the following information:

1. Name of care member
2. Must state that there was/is an illness or injury;
3. Date care member saw physician;
4. Dates care member could not work;
5. Date care member may return to work;
6. Name and address and signature of the physician.

In addition, the facility may require any care member who has been on sick leave to be examined by its own physician or nurse practitioner at any time during or after the illness.

Failure to Notify

If a care member is absent for 3 consecutive work days and fails to give proper notification of his or her absence or reasons for the absence, the care member will be considered to have resigned. Direct notification of an absence must come from the care member, not from family members, friends, or associates.

OVERTIME PAY

ArchCare will pay all non-exempt care members a premium pay rate of one and one-half times the regular hourly rate for all time worked in any work week in excess of 40 hours in a week. FLSA regulations prohibit the use of compensatory time for non-exempt care members when they work more than 40 hours in a week.



Overtime must be approved in advance by the supervisor and if necessary with the approval of the Department Head or Executive Director. Failure to obtain this approval will subject a care member to disciplinary action. There is no “pyramiding” or compounding of overtime payments. The maximum overtime rate is one and one-half times the regular hourly rate.

Paid sick time will not be considered hours worked for the purposes of calculating overtime. Exempt care members are not eligible for overtime payments.

A part-time or per diem care member will not be entitled to overtime until he/she exceeds 40 hours in the work week.

Overtime assignments shall be distributed to qualified care members on an equitable basis. All care members shall be required to work overtime when necessary for the proper operation of any facility.

PAYROLL

At most facilities and programs, paydays usually are every other Thursday. Checks are issued biweekly or weekly for all time due for the two week or one week pay period beginning on Sunday and ending on the Saturday before paychecks are distributed.

Care members should carefully review each of their paychecks and paystubs to ensure that they are accurate. Any errors regarding pay, missed meal breaks, deductions, or any other errors should be promptly reported to the Payroll Department. If care members have any questions or problems regarding their payroll checks, they should contact their supervisor, then the Payroll Department and then the Human Resources Department.

HUMAN RESOURCES RECORDS

In order to maintain a complete and accurate historical and current record of each care member’s status, it is extremely important that care members

notify their local Human Resources office of any changes in their employment status or personal data, such as:

- Name and marital status (for benefit purposes)
- Address and telephone number
- Number of eligible dependents
- W-4 and IT-2104 deductions
- person to contact in case of emergency

Care members may review their files by request under the supervision of a Human Resources representative. Care members may not alter or remove documents from their files. However, care members may submit a written rebuttal or challenge to any information that they believe to be erroneous.

E. ON-THE-JOB

SUBSTANCE ABUSE

ArchCare strictly prohibits the selling, purchasing, using, possessing, or being under the influence of any drug, alcohol or controlled substance while on ArchCare premises. This includes even the appearance of being under the influence, e.g., the smell of alcohol on a care member's breath.

Any care member who is a witness to any violation of this policy is required to report this to their supervisor, their local Human Resources office or the Corporate Compliance Office.

These activities constitute serious violations of ArchCare rules, and care members in violation of the policy are subject to appropriate disciplinary action, up to and including dismissal. Additionally, ArchCare reserves the right to require a care member to undergo a medical evaluation under appropriate circumstances.

LICENSES AND CERTIFICATIONS

All care members who are licensed, registered and/or certified for their positions are required to bring in their original licenses, registrations and/or certificates which will be photocopied and placed in each care member's Human Resources file. In addition, care members are required to renew their licenses, registrations and/or certificates on a timely basis.

Care members are required to bring in all renewals of licenses, registrations and/or certificates for copying within ten (10) days of receipt, but no later than the expiration date of the current license, registration or certificate. Care members with expired licenses, registrations and/or certificates will be removed from their jobs until they are renewed.

UNIFORMS AND APPEARANCE

Care members will wear proper uniforms and care members who do not have a specific uniform are expected to maintain a neat, well-groomed appearance at all times. Care members should avoid extremes in dress. All care members are required to dress and to groom so that no harm, disturbance or inconvenience is caused to any resident/patient/member or to other care members. This includes but is not limited to, the wearing of jewelry and other ornaments and clipping of fingernails.

IDENTIFICATION BADGES

ID badges must be worn by all care members, face showing, at all times. Failure or refusal to comply with this policy will result in disciplinary action. Photo identification badges are the property of ArchCare. There will be a replacement charge for lost identification badges. There will be no charge for changing information on identification badges.

CARE MEMBER CODE OF CONDUCT

The orderly and efficient operations of ArchCare require that care members maintain proper standards of conduct at all times. All care members are required to conduct themselves in a professional and courteous manner and should be treated in the same way.

Care members who fail to maintain proper standards of conduct toward their work, their co-workers, residents/patients/members or visitors, or who violate policies, are subject to appropriate disciplinary action, up to and including discharge.

DISCIPLINARY ACTION

Any care member whose conduct, actions or performance violates or conflicts with ArchCare's policies may be terminated immediately and without warning. The following are some examples of grounds for disciplinary action as appropriate, up to and including immediate dismissal:

- Resident/patient/member abuse and/or neglect.
- Job or resident/patient/member abandonment.
- Breach of trust; dishonesty.
- Conviction of a felony.
- Falsification, misrepresentation or omission of facts.
- Gross negligence.
- Insubordination.
- Fighting or serious breach of acceptable behavior.
- Violation of the Alcohol or Drug Policy.
- Theft including theft of time.
- Violation of ArchCare's Conflict of Interest/Outside Employment Policy, Confidentiality Policy, and/or Social Networking Policy.
- Unauthorized absence from post of duty.

- Loitering, loafing or sleeping while on duty; or loitering or returning to the work area or other enclosed areas while off duty.
- Failure or refusal to follow the instructions of a Supervisor including refusal to accept a job assignment.
- Use of vile, foul or abusive language or acting in a disrespectful manner to any care member, supervisor, resident/patient/member or visitor.
- Threatening, intimidating or coercing another care member or resident/patient/member by word or deed including sexual harassment.
- Sexual or other forms of harassment, intimidation or threatening behavior.
- Threatening harm to property.
- Possession of a weapon on the premises.
- Gambling, conducting games of chance or possession of gambling devices on the premises.
- Soliciting tips or gratuities and other unauthorized solicitations including borrowing money from residents/patients/members.
- Absenteeism/lateness.
- Failure to report an absence on a timely basis.
- Unauthorized or extended meal or break.
- Unauthorized leave of absence.
- Refusal to work mandatory overtime.
- Failure to follow department procedures.
- Medication error.
- Actions which are illegal or violate policies, procedures, rules or regulations.
- Disrupting the workplace or jeopardizing the safety and welfare of residents/patients/members and care members.

This listing is not exhaustive but is meant as a guide.

Discipline may include any action(s), up to and including termination.

Discipline for exempt care members will not, however, include:

- Reductions in salary for partial day absence(s).
- Suspensions without pay for periods that are less than a full day.
- ArchCare may, however, assert any other type of discipline, up to and including termination, for exempt care members.

PROCESSING AND RESOLUTION OF GRIEVANCES FOR NON-UNION CARE MEMBERS

Any non-union care member can present a grievance without fear of retaliation to such care member. Non-union care members are responsible for notifying their immediate supervisors within a reasonable time after the onset of the issue being grieved.

Step 1:

The immediate supervisor must provide the care member with a response to the grievance within 5 working days. If the grievance is not disposed of, the care member may, within 5 working days, submit a signed written statement of the grievance to the Department Head.

Step 2:

The Department Head must provide the care member with a response to the grievance within 5 working days. If the grievance is not disposed of, the care member may, within 5 working days, submit a signed written statement of the grievance to Human Resources.

Step 3:

A Human Resources representative will review and investigate the grievance and, within 15 working days, submit a recommendation to the Vice President of Human Resources as to the appropriate disposition of the grievance. The Vice President of Human Resources will review the recommendation received and will issue a final determination as to the disposition of the grievance.



All reviews of the grievance and/or disposition of the grievance may include interviews of all parties to the grievance.

The above described grievance process does not apply to care members who are union members and covered by a collective bargaining agreement.

ACCIDENTS, INCIDENTS AND EMERGENCIES

All care members will be provided care, first-aid and emergency service, as required, for injuries or illnesses while on the premises. If a care member is injured on the job, ArchCare provides coverage and protection in accordance with Workers' Compensation Law. When an injury is sustained while at work or if the care member is involved in any unusual incident while on duty, it must be reported immediately to the care member's immediate supervisor, who in turn will notify the care member responsible for care member health services and Human Resources of the incident. If a care member is injured and in need of medical attention, a supervisor should be contacted or "911" should be called if the care member needs emergency services.

An incident report must be filled out at the time of the incident/accident, even if it appears at the time that no injury exists. This incident report is essential for insurance purposes and for the protection of the care member and the employer.

Failure to report accidents is a serious matter as it may jeopardize a care member's coverage under Workers' Compensation Insurance. Completed forms must be forwarded to Human Resources.

SAFETY REGULATIONS

Safety is everyone's responsibility. All care members must become acquainted with proper safety techniques and procedures through ArchCare's general orientation program for new care members.

Unsafe Conditions

Every care member has the obligation to maintain a safe work environment for themselves, residents, patients, members, visitors and for their fellow care members. When care members notice an unsafe or potentially unsafe situation, they must report it to their immediate supervisor or an appropriate supervisor.

Security

Care members are encouraged to report to their supervisor and/or the Security Department any incident regarding the overall security of the facility such as thefts, suspicious activities, accidents or dangerous situations.

Each ArchCare program reserves the right to question any person, including care members, entering or leaving the premises and to inspect the person and his/her briefcases, lunch boxes, packages or any other items carried to or from the workplace. In addition, each program reserves the right to inspect any vehicle, work area and locker of such persons on the premises. Any contraband (e.g., illegal drugs, unauthorized controlled substances, alcohol, weapons or other dangerous instruments) found during inspections shall be confiscated by ArchCare and disciplinary action up to and including termination will be taken.

Desks, file cabinets, computer systems and other areas in which work is performed, filed or stored are the property of ArchCare. Care member lockers are also the property of ArchCare. Care members should not have any expectation of privacy with respect to such areas, materials or information, wherever maintained or stored.

All questioning and searches will be conducted at the employer's discretion and are intended to promote security at the facility and to protect residents and care members from unfair accusations.

SOLICITATIONS, DISTRIBUTIONS, AND USE OF BULLETIN BOARDS

It is essential that all care members be permitted to carry out their responsibilities free from distractions and interference. Therefore, all solicitations (i.e., political, charitable, union or for any other purpose other than ArchCare business) during working time is prohibited, as is the distribution of publications, literature, handbills or other materials in work areas during and outside working time.

In addition, visitors are not permitted to solicit, conduct pools or collections or sell tickets or merchandise on ArchCare property without specific approval of an Executive Director (for nursing homes); a Vice President or Senior Vice President (for other locations).

Bulletin boards maintained by the facilities are to be used only for posting or distributing material of the following nature:

- Notices concerning matters directly related to ArchCare business.
- Announcements of a business nature which are applicable and of interest to care members.

CELL PHONE USAGE

Care members are prohibited from using cell phones in resident/patient/member care areas. This includes texting and emailing using personal communication devices. Cell phones should be left in locker rooms or should be turned off while in resident areas. Each facility has designated areas where cell phones may be used without disrupting the operation of the facility or department. Please consult your supervisor or local Human Resources office for a list of locations. Care members that are required to carry cell phones due to their position are excluded from this policy.

MAIL FACILITIES, COMPUTERS, PHOTOCOPYING AND FACSIMILES

Mail services, computers, photocopying and facsimile machines are to be used for business purposes only. Care members may not engage in social networking using any of ArchCare's electronic resources or during work time.

VISITORS, VENDORS AND OTHER GUESTS

All visitors, vendors and guests must be registered with the Security Department. Visitors are required to sign in and will be given ID badges that must be worn while on facility/program premises.

If you notice any unidentified person(s) loitering in the hall or entering your office, immediately notify your supervisor or the Security Department.

INTERNAL INVESTIGATIONS AND SEARCHES

From time to time, ArchCare may be required to conduct internal investigations pertaining to security, auditing or work-related matters. Care members are expected to cooperate fully with and assist in these investigations if requested to do so.

Whenever necessary, at the employer's discretion, care members' work areas (i.e., desks, file cabinets, etc.), lockers and personal belongings (i.e., brief cases, handbags, etc.) may be subject to searches. Care members are required to cooperate.

VERIFICATION OF EMPLOYMENT

All inquiries regarding a current or former ArchCare care member must be referred to the local Human Resources office. No care member may issue a reference letter to any current or former care member or prospective care member.

In response to an outside request for information regarding a current or former care member, the Human Resources office will furnish or verify only a care member's name, dates of employment, job title and department. No information regarding any current or former care member, or his/her employment will be released unless a written request is received and the care member authorizes ArchCare to release such information in writing or ArchCare is required by law to furnish information.

SMOKING POLICY

Care members are prohibited from smoking in all facilities and locations, including the residents' smoking areas.

SEVERE WEATHER POLICY

If the President and Chief Executive Officer declares a day to be a "severe weather" day, care members are notified by their Department Heads. As healthcare providers, it is critical that we provide uninterrupted care to those we serve. Care members must make every attempt to come to work during severe weather.

Care members will have a grace period of ninety (90) minutes to report to work. Care members who arrive within ninety (90) minutes of their start time will be paid for the entire shift/day. At the Department Head's discretion, this grace period can be extended. Care members who do not

report to work will need to follow the call in policy and inform their supervisor. These care members will need to use accrued vacation, personal or Holiday time.

F. LEAVING THE ORGANIZATION

RESIGNATIONS

It is expected that a care member will provide ArchCare with a written advance resignation notice period at least equal to the care member's annual vacation allowance. In order to qualify for payment of unused vacation, the care member must work throughout the notice period.

Care members leaving due to voluntary resignation, retirement or dismissal may be eligible to receive payment for vacation and personal days that have been accrued but not used. Holidays worked but unpaid are paid out at the time of termination if the resignation is within 60 days of the holiday. Accrued but unused sick days are not paid out at the time of termination.

DISMISSALS

Care members have the status of "care member-at-will" meaning that no one has a contractual right, express or implied, to remain in ArchCare's employ. ArchCare may terminate a care member's employment, or a care member may terminate his/her employment, with or without cause, and with or without notice, at any time.

In the event of dismissal for misconduct, all benefits end on the day of termination. Benefit Continuation ("Self Pay Privilege") may not be available to anyone dismissed from ArchCare for gross misconduct.

Care members leaving due to voluntary resignation, retirement or dismissal may be eligible to receive payment for vacation and personal days that have been accrued but not used. Holidays worked but unpaid are paid out at the time of termination if the resignation is within 60 days of the holiday. Accrued but unused sick days are not paid out at the time of termination.

POST RESIGNATION/TERMINATION PROCEDURES

Exit Interviews

The local Human Resources office is responsible for scheduling and conducting an exit interview with a terminating care member on or about the care member's last day of employment.

Supervisors are responsible for arranging the return of ArchCare property including:

- Photo Identification Card
- Office keys
- System manuals
- Laptop computers, Blackberry devices
- Any additional ArchCare-owned or issued property
- Notifying the IT Department to disable system access

Benefits (Life, Medical and Dental) end on the care member's last day of employment. A care member, unless dismissed for gross misconduct, has the option to convert to individual life insurance, and/or to continue Medical/Dental Benefits at their own cost.

Final Paychecks

Care members leaving the organization are expected to return office keys, their photo identification card, etc., before their final paycheck is issued. This final paycheck will normally be mailed during the next pay period after



the termination date. If there are unpaid obligations to ArchCare, the final paycheck will reflect the appropriate deductions.

Group Health Continuation Coverage – Self Pay Privilege

This plan offers care members and their families the opportunity for a temporary extension of health coverage (called “Self Pay Privilege”) in certain instances where coverage under the plan would otherwise end.

Care members who are covered by the plan, have the right to continue their current coverage at their expense if they terminate employment for any reason other than gross misconduct.

SUPPLEMENT TO CARE MEMBER HANDBOOK

NONRETALTATION

ArchCare is committed to preventing and detecting fraud, waste and abuse in its organization and to comply with all applicable state and federal laws. To that end, ArchCare maintains a vigorous compliance program and educates its Care Members regarding the importance of submitting accurate claims and reports to state and federal governments, as well as the requirements, rights and remedies of state and federal laws on the submission of false claims, including the rights of employees to be protected as whistleblowers. See the attachment to this section for the details of these laws.

All Care Members are required to report unethical or illegal conduct or fraud, waste and abuse of which they become aware. Care Members will be protected from any intimidation, harassment, discrimination, retaliation or adverse employment consequences if they do so.

ArchCare has an established process for Care Members or others to report suspected misconduct of any kind on a confidential basis, either anonymously or not, to the Compliance and Corporate Ethics Helpline at (800) 443 0463, Care Members may also seek help from the Compliance Officer of their division: Akia Blandon for Nursing Homes, (646) 633 4447; Victor Fama for Health Plans, (917) 484 5055; Wendy Brizer-Maciol, for PACE, (646) 289 7715; or Regina Tancredi for Home Care at (914) 810 2654.

This policy is designed to ensure that all Care Members feel comfortable speaking up without fear of retaliation when they see or suspect illegal or unethical activity. ArchCare takes all complaints of retaliation very seriously. All such complaints will be reviewed promptly and, where appropriate, investigated. Corrective and disciplinary action will be taken when necessary.

FEDERAL & NEW YORK STATUTES RELATING TO FILING FALSE CLAIMS

I. FEDERAL LAWS

False Claims Act (31 USC 863729-3733)

The False Claims Act ("FCA") provides, in pertinent part, that:

(a) Any person who (1) knowingly presents, or causes to be presented, to an officer or employee of the United States Government or a member of the Armed Forces of the United States a false or fraudulent claim for payment or approval; (2) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government; (3) conspires to defraud the Government by getting a false or fraudulent claim paid or approved by the Government; . . . or (7) 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,

is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages which the Government sustains because of the act of that person

(b) For purposes of this section, the terms "knowing" and "knowingly" mean that a person, with respect to information (1) has actual knowledge of the information; (2) acts in deliberate ignorance of the truth or falsity of the information; or (3) acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

31 U.S.C. § 3729. While the False Claims Act imposes liability only when the claimant acts "knowingly," it does not require that the person submitting the claim have 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, also can be found liable under the Act, 31 U.S.C. 3729(b).

In sum, the False Claims Act imposes liability on any person who submits a claim to the federal government that he or she knows (or should know) is false. An example may be a physician who submits a bill to Medicare for medical services she knows she has not provided. The False Claims Act also imposes liability on an individual who may knowingly submit a false record in order to obtain payment from the government. An example of this may include a government contractor who submits records that he knows (or should know) is false and that hide compliance with certain contractual or regulatory requirements. The third area of liability includes those instances in which someone may obtain money from the federal government to which he may not be entitled, and then uses false statements or records in order to retain the money. An example of this so-called "reverse false claim" may include a hospital who obtains interim payments from Medicare throughout the year, and then knowingly files a false cost report at the end of the year in order to avoid making a refund to the Medicare program.

In addition to its substantive provisions, the FCA provides that private parties may bring an action on behalf of the United States, 31 U.S.C. 3730 (b). These private parties, known as "qui tam relators," may share in a percentage of the proceeds from an FCA action or settlement.

Section 3730(d)(1) of the FCA provides, with some exceptions, that a qui tam relator, when the Government has intervened in the lawsuit, shall receive at least 15 percent but not more than 25 percent of the proceeds of the FCA action depending upon the extent to which the relator substantially contributed to the prosecution of the action. When the Government does not intervene, section 3730(d)(2) provides that the relator shall receive an amount that the court decides is reasonable and shall be not less than 25 percent and not more than 30 percent.

Administrative Remedies for False Claims (31 USC Chapter 38, §§ 3801 -- 3812)

This statute allows for administrative recoveries by federal agencies. If a person submits a claim that the person knows is false or contains false information, or omits material information, then the agency receiving the claim may impose a penalty of up to \$5,000 for each claim. The agency may also recover twice the amount of the claim.

Unlike the False Claims Act, a violation of this law occurs when a false claim is submitted, not when it is paid. Also unlike the False Claims Act, the determination of whether a claim is false, and the imposition of fines and penalties is made by the administrative agency, not by prosecution in the federal court system.

II. NEW YORK STATE LAWS

New York's false claims laws fall into two categories: civil and administrative; and criminal laws. Some apply to recipient false claims and some apply to provider false claims, and while most are specific to health care or Medicaid, some of the "common law" crimes apply to areas of interaction with the government.

A. CIVIL AND ADMINISTRATIVE LAWS

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

The NY False Claims Act closely tracks the federal False Claims Act. It imposes penalties and fines on individuals and entities that file false or fraudulent claims for payment from any state or local government, including health care programs such as Medicaid. The penalty for filing a false claim is \$6,000 - \$12,000 per claim and the recoverable damages are between two and three times the value of the amount falsely received. In addition, the false claim filer may have to pay the government's legal fees.

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

Social Services Law §145-b. False Statements

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

Social Services Law §145-c. Sanctions

If any person applies for or receives public assistance, including Medicaid, by intentionally making a false or misleading statement, or intending to do so, the person's, the person's family's needs are not taken into account for 6 months if a first offense, 12 months if a second (or once if benefits received are over \$3,900) and five years for 4 or more offenses.

B. CRIMINAL LAWS

Social Services Law §145. Penalties

Any person who submits false statements or deliberately conceals material information in order to receive public assistance, including Medicaid, is guilty of a misdemeanor.

Social Services Law § 366-b. Penalties for Fraudulent Practices.

a. Any person who obtains or attempts to obtain, for himself or others, medical assistance by means of a false statement, concealment of material facts, impersonation or other fraudulent means is guilty of a Class A misdemeanor.

b. Any person who, with intent to defraud, presents for payment and false or fraudulent claim for furnishing services, knowingly submits false information to obtain greater Medicaid compensation or knowingly submits false information in order to obtain authorization to provide items or services is guilty of a Class A misdemeanor.

Penal Law Article 155. Larceny.

The crime of larceny applies to a person who, with intent to deprive another of his property, obtains, takes or withholds the property by means of trick, embezzlement, false pretense, false promise, including a scheme to defraud, or other similar behavior. It has been applied to Medicaid fraud cases.

- a. Fourth degree grand larceny involves property valued over \$1,000. It is a Class B felony.
- b. Third degree grand larceny involves property valued over \$3,000. It is a Class D felony.
- c. Second degree grand larceny involves property valued over \$50,000. It is a Class C felony.
- d. First degree grand larceny involves property valued over \$1 million. It is a Class B felony.

Penal Law Article 175, False Written Statements.

Four crimes in this Article relate to filing false information or claims and have been applied in Medicaid fraud prosecutions:

- a. §175.05, Falsifying business records involves entering false information, omitting material information or altering an enterprise's business records with the intent to defraud. It is a Class A misdemeanor.
- b. § 175.10, Falsifying business records in the first degree includes the elements of the §175.05 offense and includes the intent to commit another crime or conceal its commission. It is a Class B felony.
- c. §175.30, Offering a false instrument for filing in the second degree involves presenting a written instrument (including a claim for payment) to a public office knowing that it contains false information. It is a Class A misdemeanor.
- d. §175.35, Offering a false instrument for filing in the first degree includes the elements of the second degree offense and must include an intent to defraud the state or a political subdivision. It is a Class B felony.

Penal Law Article 176, Insurance Fraud.

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

- a. Insurance Fraud in the 5th degree involves intentionally filing a health insurance claim knowing that it is false. It is a Class A misdemeanor.
- b. Insurance Fraud in the 4th degree is filing a false insurance claim for over \$1,000. It is a Class B felony.

- c. Insurance fraud in the 3rd degree is filing a false insurance claim for over \$3,000. It is a Class D felony.
- d. Insurance fraud in the 2nd degree is filing a false insurance claim for over \$50,000. It is a Class C felony.
- e. Insurance fraud in the 1st degree is filing a false insurance claim for over \$1 million. It is a Class B felony.
- f. Aggravated insurance fraud is committing insurance fraud more than once. It is a Class D felony.

Penal Law Article 177, Health Care Fraud,

Applies to claims for health insurance payment, including Medicaid, and contains five crimes:

- a. Health care fraud in the 5th degree is knowingly filing, with intent to defraud, a claim for payment that intentionally has false information or omissions. It is a Class A misdemeanor.
- b. Health care fraud in the 4th degree is filing false claims and annually receiving over \$3,000 in aggregate. It is a Class B felony.
- c. Health care fraud in the 3rd degree is filing false claims and annually receiving over \$10,000 in the aggregate. It is a Class D felony.
- d. Health care fraud in the 2nd degree is filing false claims and annually receiving over \$50,000 in the aggregate. It is a Class C felony.
- e. Health care fraud in the 1st degree is filing false claims and annually receiving over \$1 million in the aggregate. It is a Class B felony.

III. WHISTLEBLOWER PROTECTION

Federal False Claims Act (31 U.S.C. §3730(h))

The FCA provides protection to *qui tam* relators who are discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of their employment as a result of their furtherance of an action under the FCA. 31 U.S.C. 3730(h). Remedies include reinstatement with comparable seniority as the *qui tam* relator would have had but for the discrimination, two times the amount of any back pay, interest on any back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

NY False Claim Act (State Finance Law §191)

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

New York Labor Law §740

An employer may not take any retaliatory action against an employee if the employee discloses information about the employer's policies, practices or activities to a regulatory, law enforcement or other similar agency or public official. Protected disclosures are those that assert that the employer is in violation of a law that creates a substantial and specific danger to the public health and safety or which constitutes health care fraud under Penal Law §177 (knowingly filing, with intent to defraud, a claim for payment that intentionally has false information or omissions). The employee's disclosure is protected only if the employee first brought up the matter with a supervisor and gave the employer a reasonable opportunity to correct the alleged violation. If an employer takes a retaliatory action against the employee, the employee may sue in state court for reinstatement to the same, or an equivalent position, any lost back wages and benefits and attorneys' fees. If the employer is a health provider and the court finds that the employer's retaliatory action was in bad faith, it may impose a civil penalty of \$10,000 on the employer.

New York Labor Law §741

A health care employer may not take any retaliatory action against an employee if the employee discloses certain information about the employer's policies, practices or activities to a regulatory, law enforcement or other similar agency or public official. Protected disclosures are those that assert that, in good faith, the employee believes constitute improper quality of patient care. The employee's disclosure is protected only if the employee first brought up the matter with a supervisor and gave the employer a reasonable opportunity to correct the alleged violation, unless the danger is imminent to the public or patient and the employee believes in good faith that reporting to a supervisor would not result in corrective action. If an employer takes a retaliatory action against the employee, the employee may sue in state court for reinstatement to the same, or an equivalent position, any lost back wages and benefits and attorneys' fees. If the employer is a health provider and the court finds that the employer's retaliatory action was in bad faith, it may impose a civil penalty of \$10,000 on the employer.