



DOWNSTATE HEALTH SCIENCES UNIVERSITY

COMPLIANCE PROGRAM

STATE UNIVERSITY OF NEW YORK
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COMPLAINT PROGRAM

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I. INTRODUCTION

State University of New York, Downstate Health Sciences University (Downstate) is proud of its long tradition of ethical and responsible conduct, and is committed to conducting its business lawfully and ethically. Each workforce member / associate of Downstate is expected to adhere to this high standard whenever they act on behalf of Downstate. This includes, but is not limited to, when dealing with other employees, patients and their families, vendors, government regulators, or the general public. Violations of legal or ethical requirements jeopardize the welfare of Downstate, its employees, patients and the communities we serve.

The Compliance Program (CP) is intended to define the conduct expected of colleagues, associates, partners and the employees who comprise Downstate's workforce, to provide guidance on how to resolve questions regarding legal and ethical issues, and to establish a mechanism for reporting possible violations of law or ethical principles within Downstate.

The term Downstate is intended to include all Downstate entities (Colleges of Medicine, College of Nursing, School of Graduate Studies, School of Health Professions, School of Public Health, Downstate Health Physicians (DHP) Clinical Practice Management Plan, University Hospital at Downstate (UHD), Research Foundation, and Center-wide Administration). It extends to all workforce members; including: Employees; Residents and Fellows; Physicians and Allied Health Professionals appointed or credentialed through Downstate's Medical Staff; Faculty, and others associated with Downstate including contractors, subcontractors or agents, who, on behalf of Downstate, furnish or authorize the furnishing of health care items or services, perform billing or coding functions, or who monitor the health care provided by Downstate.

The Downstate CP is conducted under the auspices of Downstate's President and Downstate's Compliance and Audit Oversight Committee (CAOC), which consists of administrators from each of the Downstate affiliated entities and the President of Downstate. Downstate Administration is responsible for implementing and enforcing the CP, as well as the Code of Conduct. The Compliance Program, which has been chartered by Downstate's President, is comprised of the following components:

- A. Written Policies and Procedures** – The Code of Ethics and Business Conduct, included in this document, establishes the general standards, policies and procedures with which all Downstate workforce members must comply. Each Downstate workforce member is required to read, understand and comply fully with the standards established by the Code of Conduct.

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- B. A Designated Employee with Compliance Oversight Responsibilities** – Downstate has appointed a Vice President to the Office of Compliance & Audit Services (VP-OCAS) with responsibility for administering the Program.
- The CAOC will provide oversight of the Compliance Program. Members of the Committee include Downstate’s President, University Counsel, and Senior Administrators representing each entity at Downstate.
- C. Training and Education** – Scheduled and periodic educational programs on specific areas of compliance will be administered. These programs will be provided to workforce members based on role in conjunction with the Compliance Office and relevant Department Heads and/or consultants.
- D. Open Lines of Communication** – A Compliance Line (Hotline) has been established through which workforce members may report – to the VP-OCAS – any potential violations of law or deviation from compliance standards. All reports to the Compliance Line are confidential and may also be made anonymously. Reports to the Compliance Line may be made orally by calling **877-349-SUNY (7869)** or via a web-based report by clicking on the “Compliance Line” link on the main Downstate web-page; www.downstate.edu.
- E. Disciplinary Policies to Encourage Participation** – All workforce members must participate in Downstate’s Compliance Program. Disciplinary action may be taken for failure to report a known or suspected violation. All workforce members must cooperate fully with Compliance initiatives, including inquiries, investigations and corrective measures.
- F. Routine Identification of Compliance Risk Areas / Monitoring and Auditing Systems** – The VP-OCAS will oversee ongoing internal monitoring for compliance with established standards, policies and procedures. Annual Compliance workplans will be developed based on Federal and State guidance as well as internal assessments and continuous review of high-risk areas.
- G. A System for Responding to Compliance Issues** – Corrective action, as appropriate, will be consistently enforced in cooperation with applicable Downstate business entities and human resources leadership. However, all corrective action will be case specific. All Downstate workforce members are required to cooperate with / take part in corrective action initiatives. Corrective action for failure to adhere to Downstate’s Compliance Program may result in termination.
- H. Policies of Non-Intimidation and Non-Retaliation** – Good faith participation in Downstate’s Compliance Program is required of all workforce members. As such, intimidation or retaliatory behavior for reporting concerns or cooperation with Compliance initiatives will not be tolerated. Individuals engaging in intimidating or penalizing conduct will be subject to disciplinary action.

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- I. **Affected Contractors** - In addition to workforce members, Downstate's Compliance Program applies to its 'Affected Contractors;' individuals or entities that provide Medicaid-related services, perform billing or coding functions, or monitor healthcare services furnished by or on behalf of Downstate. This includes subcontractors, agents and independent contractors.

II. CODE OF ETHICS AND BUSINESS CONDUCT

A. COMPLIANCE WITH LAWS AND REGULATIONS

Downstate will strive to ensure that all activity by or on behalf of the organization is in compliance with applicable laws and regulations.

Applicable Law and Regulation Overview

Not all laws and regulations are covered in this overview. The primary areas of concern for Downstate's workforce are set forth. These concerns include the Medicare and Medicaid Anti-Kickback Statute, the Stark Self-Referral Statutes, State Self-Referral prohibitions, Federal and State civil and criminal false claims provisions, whistleblower protections and Physician at Teaching Hospital regulations. Additional civil monetary penalties and exclusion provisions also exist. These matters are summarized below. Penalties are often indexed to inflation so fines may be adjusted annually. Violations can result in exclusion from Federal or State healthcare programs, reputational harm and significant financial consequences.

The Department of Health and Human Services website offers summaries on Federal fraud & abuse laws, which may include fines and penalties adjusted for time/ inflation:

<https://oig.hhs.gov/compliance/physician-education/fraud-abuse-laws/>

1. Federal Anti-Kickback Statute

This statute makes it unlawful to give or receive any remuneration to another in exchange for a referral or an inducement to provide health care services paid for by Medicare or Medicaid. Violation of these provisions is considered a felony, and may carry criminal penalties including a \$25,000 fine and five-year imprisonment. An individual or entity in violation of the statute can be excluded as a participant of

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Medicare and/or Medicaid. The definition of remuneration in this statute is broad and includes virtually anything of value including any kickback, bribe, or rebate given “directly or indirectly, overtly or covertly, in cash or in kind.” The statute and regulations promulgated by the Department of Health and Human Services (HHS), Office of Inspector General (OIG) provide for a number of “safe harbors” or transactions that are expressly stated not to violate the fraud and abuse limitations if the intent or actual purpose of the transaction is appropriate. Downstate’s Office of General Counsel is available to assist in the structuring of and preparation of documentation reflecting legal arrangements with physicians. No employee should ever solicit or receive, or offer to pay or pay remuneration of any type (including kickbacks, bribes, or rebates) in return for referring or recommending the referral of an individual to another person, Downstate or other medical facility for services.

2. Stark Self-Referral Statutes

Under the Federal Stark statutes, a physician may not make a referral to an entity in which they or an immediate family member has an investment or with which they have a compensation arrangement for the furnishing of Designated Health Services (DHS) paid for by Medicare or Medicaid. However, Stark sets forth several exceptions to its provisions, which have the effect of permitting a physician with an ownership interest or compensation arrangement to refer Medicare or Medicaid patients to such entity for the provision of DHS. Downstate’s Office of General Counsel is available to assist in determining whether a specific situation meets a Stark exception.

There are various penalties for violating the Stark statutes. First, an entity to which a prohibited referral was made may not bill for services rendered. Therefore, if an entity provides DHS to a patient referred by a physician who has a compensation arrangement which does not meet the exception, the entity will not be paid for providing those services. If the entity received payment pursuant to a prohibited referral, it must refund the payment. In addition to having to return the money, both the physician who referred and the entity who accepted the prohibited referral may be subject to civil monetary penalties and exclusion from the Medicare and Medicaid programs for making such illegal referrals.

3. New York State Self-Referral Statute

Article II – D §238 of the Public Health Law generally prohibits healthcare practitioners from referring patients for clinical laboratory services, pharmacy services, x-ray or imaging services where the practitioner or immediate family member has a financial relationship with such service. Financial relationship is defined as an ownership interest, investment interest or compensation arrangement.

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Immediate family member is defined to include spouse, parents, children, siblings, in-laws, grandparents, and grandchildren.

4. Federal and New York False Claims Acts (FCA)

The Federal False Claims Act, 31 USC §3279, et seq, and the New York False Claims Act, State Finance Law §187-194, establishes liability for any person who engages in certain acts, including:

- Knowingly presenting or causing to be presented a false or fraudulent claim to the Federal, State or local government for payment;
- Knowingly making, using or causing to be made or used, a false statement to get a false or fraudulent claim paid by the Federal, State or local government;
- Conspiring to defraud the Federal, State or local government by getting a false or fraudulent claim allowed or paid; or
- Knowingly making, using, or causing a false statement to conceal, avoid or decrease an obligation to pay money to the Federal, State or local government.

Under the Federal & NY False Claims Acts, a person acts “knowingly” if s/he:

- Has actual knowledge of the information;
- Acts in deliberate ignorance of the truth or falsity of the information; or
- Acts in reckless disregard of the truth or falsity of the information.

There is no requirement that the person specifically intended to defraud the government through his or her actions.

Under the Federal False Claims Act, a “claim” is any request or demand for money or property if the Federal, State or local government provides any portion of the money or property in question. This includes requests or demands submitted to a contractor of the Government and includes Medicaid and Medicare claims.

A violation of the Federal False Claims Act results in a civil penalty between \$14,308 and \$28,619 for each false claim submitted, plus up to three times the amount of the damages sustained by the Government because of the violation. In addition, the United States Department of Health and Human Services (HHS) Office of the Inspector General (OIG) may exclude the violator from participation in Federal health care programs.

A violation of the NY False Claims Act results in a civil penalty between \$6,000 and \$12,000 for each false claim submitted, plus three times the amount of damages sustained by the State and three times the amount of damages sustained by a local government because of the violation.

In sum, the FCA imposes liability on any person who submits a claim to a government that they know or should know is false. An example may be a physician billing

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Medicare/Medicaid for medical services not provided. The FCA also imposes liability on an individual who may knowingly submit a false record in order to obtain payment from the government. An example may be a government contractor who submits false records to indicate compliance with contractual or regulatory requirements. The third area of liability includes those instances in which someone may obtain money from the 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.

Additional examples of the types of actions that could violate the FCA include:

- Filing a claim for services that were not performed as described;
- Filing a claim for services that were performed, but were medically unnecessary;
- Filing a claim for resident services without documented Teaching Physician presence;
- Duplicate billing for the same service, such as billing Medicare/Medicaid and also a private insurer;
- Up-coding, such as providing a simple office visit and billing for a comprehensive visit.

In general, under the Federal and NY False Claims Acts, private parties may bring action on behalf of the United States. These private parties, known as “qui tam relators” or “whistleblowers,” may share in a percentage of the proceeds from an FCA action or settlement. Both the Federal & NY False Claims Acts provide that when the Federal, State or local government intervenes in the lawsuit, the qui tam relator, with some exceptions, shall receive at least 15%, but not more than 25% 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 Federal, State or local government does not intervene, the relator shall receive an amount that the court decides is reasonable and shall be not less than 25% and not more than 30%.

In addition, under both the Federal and NY False Claims Acts, an employee who is discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against in the terms and conditions of employment as a result of the furtherance of an action under the FCA is entitled to all relief necessary to make the individual whole. 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 plus interest and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys’ fees. At the same

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time, though, any person who brings a clearly frivolous case can be held liable for the defendant's attorney's fees and costs.

Note, as Downstate is a component of the State University of New York, and thus is a State agency, the United States Supreme Court has held that private persons may NOT be eligible to file qui tam/whistleblower lawsuits against State agencies and may NOT be entitled to a share of the proceeds of any recoveries under the FCA.

5. Federal Program Fraud Civil Remedies Act of 1986

The Program Fraud Civil Remedies Act of 1986, 31 USC §3801, et seq, is similar to the False Claims Act, establishing an administrative remedy against any person who presents or causes to be presented a claim of written statement that the person knows or has reason to know is false, fictitious, or fraudulent to certain Federal agencies, including HHS, and again, includes Medicaid and Medicare claims.

Similar to the False Claims Act, a person who "knows or has reason to know" is defined as one who:

- Has actual knowledge of the information;
- Acts in deliberate ignorance of the truth or falsity of the information; or
- Acts in reckless disregard of the truth or falsity of the information.

Once again, there is no necessary proof of specific intent to defraud the government.

A violation of the Program Fraud Civil Remedies Act can result in a civil monetary penalty of up to \$14,307 per false claim and an assessment of twice the amount of the false claim. The penalty can be imposed through an administrative hearing after the investigation by HHS and approved by the United States Attorney General.

6. OIG Exclusion Screening

Downstate is committed to ensuring compliance with the Office of Inspector General (OIG) guidelines and to prevent the employment or engagement of individuals or entities excluded from participation in federally funded healthcare programs. Regular exclusion screenings shall be conducted in accordance with OIG requirements, as well as Federal and State requirements, to safeguard the integrity of Downstate operations.

Applicable Human Resources units will ensure that new hires undergo exclusion screening prior to employment and/or engagement with a prospective member of Downstate's workforce.

Applicable Procurement units will ensure that all vendors and contractors are screened, and determined in good standing, before engagement of services.

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Initial Screening: All prospective employees, contractors, and vendors shall be screened against applicable exclusion lists, including (but not limited to) the following:

- OIG's list of Excluded Individuals/Entities (LEIE);
- System for Award Management (SAM) – to identify entities debarred or suspended from federal contracts or assistance;
- NYS Medicaid Exclusion List;
- National Practitioner Data Bank (NPDB) – to query for adverse actions or sanctions involving healthcare professionals.

Monthly Screening: Downstate's applicable Human Resources Units will conduct monthly checks of current workforce members to identify any changes in exclusion status.

Positive Matches: If an individual or entity is identified on the LEIE or other applicable exclusion list, Human Resources will notify the VP-OCAS.

- Excluded workforce members are subject to termination if/when a match is confirmed.
- Review will be conducted to assess / identify any potential overpayments that may have occurred in the engagement of the excluded party.
- Downstate Administrators, including Counsel, will be notified.
- Applicable regulatory authorities will be notified of any confirmed overpayment or liability.

7. New York Social Services Law (NYSSL)

- a. Under NYSSL §145, §145-b, and §145-c, it is a misdemeanor to knowingly make a false statement or representation, or to deliberately conceal any material fact, or engage in any other fraudulent scheme or device, to obtain or attempt to obtain payments under the New York State Medicaid Program. For a violation of this law, the local Social Services district or the State has the right to recover civil damages equal to three times the amount by which any figure is falsely overstated. In the case of non-monetary false statements, the local Social Service district or State may recover three times the damages (or \$10,000, whichever is greater) sustained by the government due to the violation.

The law also empowers the New York State Department of Health to impose a monetary penalty on any person who, among other actions, causes Medicaid payments to be made if the person knew or had reason to know that:

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- The payment involved care, services, or supplies that were medically improper, unnecessary, or excessive;
- The care, services or supplies were not provided as claimed;
- The person who ordered or prescribed the improper, unnecessary, or excessive care, services, or supplies was suspended or excluded from the Medicaid Program at the time the care, services or supplies were furnished; or
- The services or supplies were not in fact provided.

The monetary penalty shall not exceed \$10,000 for each item or service in question, unless a penalty under the section has been imposed within the previous five years, in which case the penalty shall not exceed \$30,000 per item or service.

If a person applies for or receives Medicaid by intentionally making a false or misleading statement or by intending to do so, the person's and his/her family's needs are not taken into account for a period of 6 months upon the first offense; for a period of 12 months upon the second offense (or an offense where benefits have already been received are not more than \$3,900); 18 months upon the third offense (or an offense where benefits have already been received totaling over \$3,900); and for 5 years for any subsequent, like offenses.

- b. Under NYSLL §366-b (2), any person who attempts to obtain Medicaid by means of a false statement, concealment, impersonation or other fraudulent means and any person who, with intent to defraud, presents for allowance or payment any false or fraudulent claim for furnishing services or merchandise, or knowingly submits false information for the purpose of obtaining compensation greater than that to which s/he is legally entitled for furnishing services or merchandise shall be guilty of a class A misdemeanor. If such an act constitutes a violation of a provision of the penal law of the State of New York, the person committing the act shall be punished in accordance with the penalties fixed by such law.

8. New York Penal Law (NYPL)

- a. Under New York Penal Law §155, 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, or false promise, including a scheme to defraud or other similar behavior. This law has been applied to Medicaid fraud cases.
 - 4th degree grand larceny (Class E felony) involves property valued over \$1,000.

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- 3rd degree grand larceny (Class D felony) involves property valued over \$3,000.
 - 2nd degree grand larceny (Class C felony) involves property valued over \$50,000.
 - 1st degree grand larceny (Class B felony) involves property valued over \$1 million.
- b. Penal Law §175 contains four crimes related to filing false information or claims, which have been applied in Medicaid fraud prosecutions:
- Falsifying business records, involving entering false information, omitting material information or altering an enterprise's business records with the intent to defraud is a Class A misdemeanor.
 - Falsifying records in the 1st degree, which includes the elements above and the intent to commit another crime or conceal its commission is a Class E felony.
 - Offering a false instrument for filing in the 2nd degree, which involves presenting a written instrument (including a claim for payment) to a public office knowing that it contains false information, is a Class A misdemeanor.
 - Offering a false instrument for filing in the 1st degree, which includes the elements above and the intent to defraud the State or a political subdivision is a Class E felony.
- c. Penal Law §176 contains six crimes and applies to claims for health insurance payment, including Medicaid:
- 5th degree insurance fraud (Class A misdemeanor) involves intentionally filing a health insurance claim knowing that it is false.
 - 4th degree insurance fraud (Class E felony) is filing a false insurance claim for over \$1,000.
 - 3rd degree insurance fraud (Class D felony) is filing a false insurance claim for over \$50,000.
 - 1st degree insurance fraud (Class B felony) is filing a false insurance claim for over \$1 million.
 - Aggravated insurance fraud (Class D felony) is committing insurance fraud more than once.
- d. NYPL §177 establishes the crime of Health Care Fraud. A person commits such a crime when, with the intent to defraud Medicaid (or other health plans, including non-governmental plans), s/he knowingly and willfully provides false information or omits material information for the purpose of requesting payment for a health care item or service and, as a result of the false information or omission, receives such a payment in an amount to which s/he is not entitled. Health Care Fraud is punished with fines and jail time based on the amount of payment inappropriately

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received due to the commission of the crime; the higher the payments in a one-year period, the more severe the punishments, which currently range up to 25 years if more than \$1 million in improper payments are involved.

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

9. New York Labor Law (NYLL)

Under NYLL §740 and §741, an employer shall not take any retaliatory personnel action against an employee because the employee:

- Discloses or threatens to disclose to a supervisor or to a public body, an activity, policy or practice of the employer that is in violation of law, rule, or regulation in which the violation creates and presents a substantial and specific danger to the public health or safety, or which constitutes health care fraud;
- Provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any such violation of a law, rule or regulation by such employer; or
- Objects to or refuses to participate in any such activity, policy or practice in violation of a law, rule or regulation.

To bring an action under this provision, the employee must first bring the alleged violation to the attention of the employer and give the employer a reasonable opportunity to correct the allegedly unlawful practice, 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. The law allows employees who are the subject of a retaliatory action to bring a civil action in court and seek relief such as injunctive relief to restrain continued retaliation; reinstatement, back-pay and compensation of reasonable costs. If the employer is a health provider and the court finds that the employer's retaliatory action was in bad faith, it may impose civil penalty of \$10,000 on the employer. The law also provides that employees who bring

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an action without basis in law or fact may be held liable to the employer for its attorney's fees and costs.

10. Provisions of the Social Security Act

The Social Security Act sets forth a variety of other provisions including civil monetary and other penalties, including exclusion from participating in Medicare and Medicaid, for various billing-related offenses. For example, civil monetary penalties apply to violations of Medicare assignment regulations, violations of participating provider agreements, use of false physician credentials, the filing of claims by excluded entities, and providing false or misleading information regarding Downstate discharge decisions. HHS can also initiate permissive exclusion actions for such improper billing practices as submitting claims "substantially in excess" of the provider's usual costs or charges, or for unnecessary services; or failing to disclose ownership and officers, subcontractors and suppliers, and more.

11. Labor and Employee Relations Matters

In the conduct of its business, Downstate deals with a number of labor unions. It is Downstate's policy to comply fully with all provisions of collective bargaining agreements, applicable wage and hour laws and other statutes regulating the employer – employee relationship and the workplace environment as well as all employment policies, which have been provided to employees of Downstate. No Downstate workforce member may interfere or retaliate against another employee who seeks to invoke his or her rights under collective bargaining agreements or laws.

B. ADHERENCE TO ETHICAL STANDARDS

In furtherance of Downstate's commitment to the highest standards of business ethics and integrity, employees will accurately and honestly represent Downstate and will not engage in any activity intended to defraud any individual or organization of money, property or honest services. Every workforce member is expected to adhere to high ethical standards when he or she acts on behalf of Downstate. All Downstate workforce members will deal with representatives of accrediting bodies and/or survey teams openly and honestly.

Every officer and employee in State service is bound by the provisions of the State ethics laws, which establish specific standards of conduct, restrict certain business and professional activities – both while in State service and after leaving government – and require financial disclosure of policymakers and other higher-level officials. Violators face serious penalties.

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1. Financial Disclosure

In accordance with the New York State Commission on Ethics and Lobbying in Government (COELIG), annual statements of financial disclosure are required of all policy makers and of those who, unless exempted by the Commission, earn compensation in excess of a pre-determined salary rate. The salary level may change from year to year. Information on any change may be obtained from the Department of Human Resources.

The statements require filers to list major assets, sources of income, liabilities, names of spouses and non-emancipated children, whether they are licensed by or do business with a State agency, offices held with a political party, sources of gifts, reimbursements, trusts, deferred income, real property and other information.

All policy makers must file, but the Commission can exempt from filing individuals who are not policy makers and who do not perform certain job duties. COELIG Advisory Opinions and SUNY's Board of Trustees Policies may be consulted for further information on those seeking exemption.

In accordance with Federal Regulations 42 CFR Part 50 and 45 CFR Part 94 "Responsibility of Applicants for Promoting Objectivity in Research for which Public Health Service Funding is Sought and Responsible Prospective Contractors," faculty or staff engaged in research activities who are responsible for the design, conduct, or reporting of research (Research Investigators) must participate in the disclosure of all financial interests as described in Downstate's Research Conflict of Interest Policy. The Research Conflict of Interest Committee and Chairperson will be responsible for the oversight and management of all disclosed financial interests that may create a conflict of interest with the ethical conduct or reporting of research.

2. Political Activities and Contributions

Downstate will not seek improper advantage through contribution of its funds, equipment or facilities or the provision of other gifts or benefit to public officials or political organizations. Downstate will not make illegal or improper payment to any person or entity. It is each workforce member's right to decide whether or not to participate in political and community activities. Downstate may, from time to time, communicate information and opinions on issues of public concern that may affect Downstate. However, decisions by our workforce whether to contribute time, money or resources of their own to any political or similar activity are entirely personal and voluntary.

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State officers and employees are often interested in seeking elected political office or volunteering for political campaigns. However, in doing so, they must ensure that they do not violate the law, including the code of ethics, contained in the Public Officers Law §74. In general, State officers and employees are charged to pursue a course of conduct that will not raise suspicion among the public that they are likely to be engaged in acts in violation of the public trust.

For those planning to participate in campaigns, the following is offered as a guide to help candidates and political workers avoid violations of law (although all of the items listed may not be applicable to those who currently hold a State office and are seeking re-election).

- For Candidates:
 - i. Consider whether the office sought might conflict with your State position. While a prospective candidate, you should seek an opinion from your employing agency and the COELIG. Should an incompatibility be found, you may be prohibited from seeking office.
 - ii. Campaign on your own time. Depending on the amount of time you will devote to the campaign, you should discuss requesting a leave of absence with your supervisor.
 - iii. Avoid using your State position to gain any special advantage over a political opponent.
 - iv. Form a separate entity to receive campaign contributions. Exercise caution in soliciting and accepting contributions. If they come from individuals or entities that do business with your agency, they might constitute illegal gifts or give rise to actual or apparent conflicts of interest.
 - v. Refrain from using any State resources to aid the campaign. This rule applies to telephones, Downstate computing and/or network applications, office supplies, postage, photocopying machines or support staff assistance.
 - vi. Do not in any way indicate in your campaign literature or speeches that the State or your agency endorses your candidacy or positions. You may, however, use the name of our employing agency and description of your State position in a campaign biography.
- For Others Participating in Campaigns:
 - i. You may serve on campaign or fundraising committees of political candidates, but must be careful not to create suspicion among the public that you are violating your public trust by improperly soliciting or accepting

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contributions from individuals or entities under your agency's jurisdiction. Questions about such conditions should be directed to COLEIG.

- ii. Follow Civil Service Law §107. It protects State employees from discriminatory practices based on their political affiliations:
 - Such employees' appointments, selections to or removals from office or their employment status may not be affected or influenced by political opinions or affiliations.
 - Your State authority or official position may not be used to coerce, intimidate or otherwise influence other State employees to give money or service for any political purpose, to influence the political action of any person or entity, or to interfere with any election. A State officer or employee may not be compelled or induced to pay any political assessment or contribution.
 - State offices may not be used for soliciting or collecting any political contributions.
- iii. Abide by Election Law 17-158. It prohibits those who hold public office or those nominated or seeking a nomination, from corruptly using or promising to use, directly or indirectly, any official authority or influence to secure or help secure any office or public employment. Restrictions include making offers to procure any nomination or appointment for any public office.

If you have any questions about the ethics law, contact the NYS Commission on Ethics and Lobbying in Government at (518) 408-3976 / <https://ethics.ny.gov/contact-us>. The COELIG interprets and enforces the ethics law as it pertains to State officers and employees of the executive branch of State government, public authorities, public benefit corporations, many State commissions, the State University of New York and the City University of New York.

3. Gifts

In accordance with Advisory Opinion No 94-16 – issued by the State Ethics Commission and the subsequent interpretations offered by Advisory Opinion No 08-01 – issued by the State Commission on Public Integrity, describing (i) those gifts that may not be offered to or accepted by State officers and employees, and (ii) those gifts that are acceptable, the following shall be observed:

a. Applicable Rules:

- i. A gift may be in many forms, including money, service, loan, travel, lodging, meals, refreshments, entertainment, discount, forbearance or promise.
- ii. The value of a gift is the retail cost to purchase it; the value of a ticket entitling you to food, refreshments, entertainment, etc. is the face value

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of the ticket; if no value is indicated, the value is the actual cost to the giver.

- iii. State officers and employees and public officials must strive to avoid creating any appearance that would suggest that they are being improperly influenced in discharging their public responsibilities by refusing multiple nominal gifts from the same source/donor.
 - iv. The offer of reciprocity, or even actual reciprocity, does not reduce the value of a gift given to you.
 - v. You may not designate a friend, family member or entity (for example, a charity) to receive a gift that you cannot receive.
- b. What You Cannot Do:
- i. You are prohibited from soliciting or accepting any gift of more than nominal value when it could be reasonably inferred that the gift was intended to influence you or could reasonably be expected to influence you in the performance of your official duties or was intended as a reward for any official action. If you knowingly and intentionally do so, you are subject to a civil penalty of up to \$10,000 or being criminally charged with a Class A misdemeanor.
 - ii. Advisory Opinion No 08-01 does not define 'nominal' value, however, describes the view that nominal value is considered such a small amount that acceptance of an item of nominal value could not be reasonably interpreted or construed as attempting to influence a State employee or public official (such as a soft drink or a cup of coffee). Nominal value would not include a meal, nor would it include an alcoholic beverage. It is generally valued at \$15 or less.
 - iii. Gifts of any value, including nominal, cannot be received from a disqualified source, which is a person or entity that is regulated by, does business with, appears before or negotiates with your agency; lobbies or has litigation adverse to your agency; applies for or receives funds from your agency; or contracts with your agency or another agency when your agency receives the benefit of the contract.
 - iv. You are prohibited from soliciting or accepting gifts of any value, from any source, if it would constitute a substantial conflict with the proper discharge of your State duties. If you knowingly and intentionally do so, you are subject to fines, suspension or removal from your job by your appointing authority.
 - v. You are prohibited from soliciting or accepting a gift from a disqualified source that is directed to a third party, including (a) spouse, parent, sibling,

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child, relative or friend, and (b) any other person or entity designated by you, including a charitable entity, on your behalf.

c. What You Can Do:

- i. Complimentary attendance at charitable or political events.
- ii. Complimentary attendance at a widely attended event.
- iii. Awards, plaques or other ceremonial items.
- iv. Honorary degrees.
- v. Promotional items.
- vi. Discounts for goods and services – when offered to the general public.
- vii. Gifts from a family member or friend (when the personal relationship is the motivating factor).
- viii. Reimbursement of expenses for speaking at informational events.
- ix. Meals for participants at a professional or educational program (when meals are available to all participants).
- x. Reasonable gifts for customary or special occasions.
- xi. Under some circumstances, meals, entertainment or hospitality, but not travel or lodging, from a disqualified source when your participation at an event is for a State agency purpose and related to your official duties, when your participation will further agency programs and the event is widely attended.

If you receive the offer of a gift, you should consult with the Office of General Counsel to determine whether it is permissible to accept the gift.

4. Fund-Raising

As a charitable organization, Downstate relies heavily on contributions from donors to support its many activities. Workforce members are encouraged to support this fund-raising effort but are required to coordinate all activities with Downstate's Office of Development & Philanthropy. Contributions by workforce members should be made voluntarily. Workforce members should not feel compelled to contribute. Monies or other items received on behalf of Downstate as gifts should be deposited immediately into Downstate accounts.

C. PATIENT CARE

All patients are entitled to equal access to care, to be treated with care and respect, and to the protection of their privacy and the confidentiality of their medical records.

All Downstate workforce members must comply with the following:

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- The standards set for in Downstate's Patient Rights Statements;
- The privacy and confidentiality requirements of the Health Insurance Portability and Accountability Act (HIPAA);
- Patient care policies governing patient care including, but not limited to patient rights, patient complaints, and the confidentiality of patient records and information; and
- The Emergency Medical Treatment and Active Labor Act (EMTALA) in providing emergency medical treatment to all patients, regardless of ability to pay.

D. NON-DISCRIMINATION AND HARASSMENT

Downstate is committed to providing an academic, workplace and patient care setting which treats all individuals fairly and respectfully. Discrimination or harassment on the basis of race, color, religion, gender, nationality, age, disability, sexual orientation or veteran's status is strictly prohibited.

It is the explicit policy of Downstate to hire, promote, and compensate employees according to their qualifications, performance and potential, without discrimination based on race, color, religion, national origin, age, sex, disability, sexual orientation or veteran's status. To that end, Downstate has adopted a grievance procedure for the prompt and equitable investigation and resolution of allegations of unlawful discrimination. Downstate's Office of Diversity & Inclusion is responsible for the enforcement of this policy. If you either believe, or are aware, that this policy has been violated, you should contact the Office of Diversity & Inclusion.

All workforce members must conduct themselves in a manner indicative of respect for one another. Every Downstate workforce member must be free from discrimination or harassment from any other. Specifically, inappropriate actions that demean another individual on the basis of his or her personal attributes will not be tolerated. Inappropriate actions or behavior include, but are not limited to, jokes, slurs, disparaging or derogatory remarks that are racist, ethnic, sexist, or related to sexual orientation, age or disabilities. Everyone must adhere to this standard in the Program and should contact the Office of Diversity & Inclusion and/or Human Resources Senior Administration immediately when he or she believes it is being or has been violated.

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E. CONFIDENTIALITY

Downstate workforce members are required to maintain the confidentiality of patients' protected health information (PHI) and Downstate proprietary / confidential information and non-public personal information, in accordance with applicable legal and ethical standards.

1. Confidentiality of Patient Protected Health Information (PHI)

All workforce members at Downstate are expected to adhere to Downstate's policies on the Health Insurance Portability & Accountability Act (HIPAA); including the safeguarding of confidential patient information. Each workforce member is required to complete HIPAA training and to review and abide by Downstate's patient confidentiality / privacy policies. A HIPAA Pocket Guide, containing a summary of Downstate's patient confidentiality policies is provided to each employee upon hire and is available on Downstate's OCAS website:

<https://www.downstate.edu/about/our-administration/compliance-audit-services/brochures.html>

- All Downstate workforce members are required to keep protected health information out of public view and earshot.
- Confidential information may only be provided to Downstate workforce members who need to know the information to perform their business responsibilities.
- Downstate workforce members are required to exit, or lock access to, any confidential applications or databases upon leaving their workstations so that protected health information is not left on a computer screen where it may be viewed or accessed by individuals who are not authorized to see the information.
- Downstate's workforce are not to download, copy or remove from Downstate, any protected health information, except as necessary to perform their duties.
- Downstate's Microsoft Office suite, including the Outlook email system must be utilized for any and all confidential communication purposes. Workforce members are not permitted to use personal accounts for the transmission of PHI.
- Downstate's workforce members must ensure that all protected health information is disposed of in an appropriate and secure manner.
- Downstate workforce members are not to access, review or discuss information for purposes other than their contracted duties.

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- PHI may only be disclosed to individuals authorized to receive such information or pursuant to a patient's authorization.
- All workforce members must comply with Downstate's Mobile Device Usage Policy, including guidelines for safeguarding of mobile devices, password protections, temporary vs. permanent storage requirements, encryption standards and reporting protocols for lost or stolen devices.
- All workforce members must promptly report the mis-use or unauthorized disclosure of PHI when suspected or known. Reports can be made directly to the VP-OCAS at compliance@downstate.edu or anonymously via Downstate's Compliance Line (Hotline):

Call 877-349-SUNY (7869);

Report online by clicking on the "Compliance Line" link on the main Downstate web-page (www.downstate.edu).

2. Confidentiality of Downstate Proprietary Information

One of Downstate's most valuable assets is its body of confidential information. The widespread use of computer systems has caused this information to be accessible to many workforce members. Failure to protect this information adequately can lead to the loss of highly confidential data that may place Downstate at legal risk. Because of this risk of harm to Downstate, its employees and patients, generally no workforce member shall utilize confidential information outside the scope of their employment.

Confidential information includes Downstate methods, processes, techniques, computer software, equipment, service markers, copyrights, research data, clinical and pharmacological data, marketing and sales information, personnel data, patient lists, financial data, plans and all other know-how and trade secrets which are in the possession of Downstate and which have not been published or disclosed to the general public.

As a workforce member, you are responsible and accountable for the integrity and protection of business information and must take steps to protect information that has been entrusted to you. For example, you must not make inappropriate modifications to information or destroy or disclose information except as authorized. Documents containing sensitive data, including information concerning patients and/or non-public personal information, should be handled carefully during work hours and must be properly secured at the end of the business day. Particular attention must be paid to the security of data stored electronically. It is essential that

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workforce members properly utilize and protect passwords and take other necessary precautions to guard access to information and Downstate's network, including transferring data only to authorized parties and via approved and/or encrypted mechanisms.

3. Confidentiality of Information Owned by Others

Like Downstate, other organizations and individuals have intellectual property they want to protect. These other parties are sometimes willing to disclose their confidential information for a particular purpose. If you are on the receiving end of another party's confidential information, you must proceed with caution to prevent any accusations that you or Downstate misappropriated or misused the information.

The receipt of confidential or restricted information, whether oral, visually or written (including electronic data) must not take place until the terms of its use have been formally agreed to in writing by Downstate and the other party. Furthermore, unless otherwise delegated, establishing such an agreement for the receipt of confidential or restricted information of another party will require the prior written approval of an authorized Downstate official. Once another party's confidential or restricted information is properly in your hands, you must not use, copy, distribute or disclose that information, unless you do so in accordance with the terms of the agreement.

Special care must be taken in acquiring software from others. As intellectual property, software is protected by copyright laws and may also be protected by patent, trade secret laws or as confidential information. Such software includes computer programs, databases and related documentation owned by the party with whom you are dealing or by another party. Before you accept software or sign a license agreement, you must follow Downstate's established procedures for review and approval of such agreements. The terms and conditions of these license agreements, such as provisions not to copy or distribute programs, must be strictly followed.

If you acquire software for your personally owned equipment, you should not copy any part of such software in any work you do for Downstate, place such software on any Downstate owned computer system, or generally bring such software onto Downstate's premises.

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F. RECORD ACCURACY AND RETENTION

All Downstate records, documents and reports must be accurate, complete and in accordance with Downstate, accreditation and governmental requirements. Additionally, all records shall be retained in accordance with State and Federal record retention requirements. All bills for Downstate services must be supported by actual services provided and by required documentation. Institutional records or documents of any kind must not be removed from the premises unless approved in conjunction with the applicable policies and procedures.

1. Coding and Billing for Downstate Services

Downstate and its professional staff provide a wide range of services to patients. It is crucial that billing statements to patients and third-party payers accurately reflect the services actually provided, who performed the service, and the correct charges for those services. It is imperative that health care professionals, employees, and other workforce members involved in this process understand and follow Downstate's coding and billing policies and procedures. Downstate utilizes Coding Guidelines as mandated by the Centers for Medicare and Medicaid Services (CMS), the National Government Services (NGS), the American Medical Association (AMA), the American Hospital Association (AHA), and the American Health Information Management Association (AHIMA). The following coding classification systems are utilized by Downstate:

- a) International Classification of Diseases, 10th Revision, Clinical Modification (ICD-10-CM): Used by all providers in every healthcare setting; codes for diagnosis; developed and maintained by the Centers for Disease Control & Prevention (CDC), National Center for Health Statistics (NCHS).
- b) Procedure Classification System (ICD-10-PCS): Used for inpatient hospital procedures; developed and maintained by CMS.
- c) Healthcare Common Procedure Coding Systems (HCPCS): HCPCS is a standard, national medical code set specified for the purpose of ensuring that claims are processed in an orderly and consistent manner. HCPCS is divided into two principal subsystems, referred to as Level I and Level II of the HCPCS. HCPCS Level I codes are part of the Current Procedural Terminology (CPT) code set maintained by the CPT Editorial Panel and copyrighted by the American Medical Association (AMA). The standard, national HCPCS Level II coding system is used primarily to identify products, supplies, and services that are not included in the HCPCS Level I (CPT) codes. Such products and services include certain drugs and biologicals, ambulance services, durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS). HCPCS Level II codes are established and maintained by CMS.

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No workforce member may make or present to any person, third party, government agency, or other entity, any claim for billing that he or she knows or has reason to believe is false, fictitious or fraudulent. Negligent or careless coding and billing practices can also subject Downstate to potential liability if such bills are deemed to be false claims. Subcontractors engaged to perform coding, billing, or collection functions must:

- Be selected through a competitive bidding process, when required under NYS Procurement rules;
- Be staffed by appropriately trained and experienced personnel;
- Have in place the necessary systems of control, policies and procedures to ensure compliance with all laws and regulations pertaining to coding, claims, bills, collections and fraud & abuse regulations; and
- Perform functions specified by Downstate within the terms of a written contract.

2. Monitoring Coding and Billing for Downstate Services

Downstate will monitor its operations to ensure accuracy with its clinical reimbursement coding and billing processes. Each workforce member is expected to exercise diligence in coding the medical record and the handling and issuance of bills. Furthermore, it is the obligation of each workforce member to report immediately to his/her supervisor, manager, the VP-OCAS, or via the Compliance Line any known or suspected submissions of false, fictitious or fraudulent claims.

Downstate's workforce and OCAS will work with the applicable revenue cycle areas to facilitate self-reporting of overpayments

Per the **NYS Office of the Medicaid Inspector General's (OMIG) requirements.**

- Downstate is required to proactively identify, quantify and report overpayments received from Medicaid. Overpayments can result from billing errors, documentation issues, or payments made for services not rendered.
- Downstate must report and return identified overpayments within sixty (60) days of identification, as mandated by federal law under the Affordable Care Act (ACA) and as adopted by the OMIG.
- Downstate will utilize the OMIG's 'Self-Disclosure Program,' or when appropriate, the OMIG's 'Abbreviated Self-Disclosure' to report overpayments. The submission should include a detailed description of the overpayment, how it was identified, the root cause, and the corrective actions taken to prevent recurrence.
- Full Self-Disclosure is required for any identified overpayment, requiring a more comprehensive explanation.

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- An Abbreviated Self-Disclosure may be submitted for minor, routine overpayments like clerical errors or system glitches that have already been corrected by voiding or adjusting the claim, necessitating a simplified reporting process.
- For Full Self-Disclosures, Downstate is required to submit full documentation supporting the identified overpayment. This includes the amount to be refunded, a detailed timeline, and the methodology used to calculate the overpayment.
- When necessary, a Corrective Action Plan (CAP) that outlines the steps taken to address the cause of the overpayment and prevent future occurrences will be submitted.
- Failure to report overpayments within the 60-day timeframe can result in severe penalties, including exclusion from Medicaid, civil monetary penalties, and possible violations under the False Claims Act.

Per the **OIG Provider Self-Disclosure Protocol (OIG SDP)**:

- The VP-OCAS, in consultation with Counsel and senior leadership, will determine whether an identified issue meets the criteria for self-disclosure under the OIG SDP. SDP is intended to facilitate the resolution of matters that potentially violate Federal criminal, civil, or administrative laws for which Civil Monetary Penalties are authorized.
- OIG expects parties to disclose with a good faith willingness to resolve all liability within the Civil Monetary Penalties Law's six-year statute of limitations.
- If applicable, Downstate's revenue cycle administrators will work with the VP-OCAS to prepare a detailed disclosure submission in accordance with OIG SDP requirements, which typically include:
 - A description of the disclosed conduct.
 - An explicit identification of the law(s) that were potentially violated.
 - An explanation of the root cause.
 - A calculation of damages or overpayments; including
 - i. A review of all the claims affected by the disclosed matter; and
 - ii. A statistically valid random sample of the claims that can be projected to the population of claims affected by the matter.
 - A summary of corrective actions taken.

3. Cost Reporting

Downstate is required to submit annual cost reports to the State and Medicare Intermediaries. Downstate's workforce and external, independent auditors are to guard against any submission of inflated or inaccurate cost reports.

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4. Record Retention

State law prohibits the destruction of State records, including Downstate records, except in accordance with State approved records retention schedules. Retention and disposition of the majority of Downstate records are governed by the “General Retention and Disposition Schedule for New York State Government Records.”

This schedule provides retention and disposition authorizations for records commonly created and maintained by State agencies, i.e., administrative personnel and fiscal records. The retention and destruction of records unique to SUNY and Downstate as an academic medical center, i.e., student records, patient records, hospital finance records and patient billing records are governed by the SUNY Records Retention and Disposition Schedule. No records may be destroyed unless they are covered by the State or SUNY schedules or unless specific approval is obtained from the New York State Archives and Records Administration in the State Department of Education. Questions about records disposition should be referred to the VP-OCAS or to Downstate’s Office of General Counsel.

One of the most important assets of a health care organization is the integrity of its records systems. The following general rules apply with respect to the handling of confidential information, the maintenance of records, and the retention/destruction of records:

- All records must be retained for at least the minimum periods required by State and Federal law.
- Records that may affect any Downstate obligation to patients must be retained for a period of time that will ensure that they are available when needed.
- Adequate records must be made and maintained in order to document Downstate’s compliance with all relevant laws.
- Destruction of records may take place only pursuant to Downstate’s policies regarding destruction of records.

G. [USE AND PROTECTION OF DOWNSTATE ASSETS AND TRANSACTIONS](#)

All workforce members will strive to preserve and protect Downstate assets by making prudent and effective use of its resources and properly and accurately reporting its financial condition.

It is the responsibility of each workforce member to maintain the integrity of Downstate’s financial records. Downstate employees may never participate in any misstatement of

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Downstate's accounts. There is never justification for maintaining off the book accounts to facilitate questionable or illegal payments. Downstate's financial records serve as a basis for managing Downstate's activities. These records assist Downstate in carrying out its responsibilities to patients, colleagues, suppliers and others; and are necessary for compliance with tax and financial reporting requirements.

Each workforce member has a duty to maintain and protect Downstate property prudently. You must respect and care for Downstate assets, both tangible and intangible, including:

- Downstate's physical plant and equipment; and
- Downstate's other resources such as reference materials and reports, computer software, data processing systems, and databases.

You may not remove Downstate property from the premises unless you have received prior approval from your supervisor. Any community or charitable use of organization resources must be approved in advance by the applicable authorized personnel. Any use of organization resources for personal financial gain unrelated to Downstate is prohibited.

If you are responsible for acquiring or disposing of assets, be careful to stay within the limits of your authority. If you report on such matters as travel and entertainment expenses, hours worked, petty cash or vacation time, be accurate. Receipts and expense reports must be provided for all expenditures, in accordance with Downstate policy.

H. AVOIDANCE OF CONFLICTS OF INTEREST

Executives, managers, physicians, other employees, voluntary physicians and committee members owe a duty of undivided and unqualified loyalty to Downstate. Persons holding such positions may not use their positions to profit personally or to assist others in profiting in any way at the expense of the organization. We must avoid conduct which has even the appearance of conflict between our personal interests and those of Downstate, and comply fully with the New York State Commission on Ethics and Lobbying in Government, and the Code of Ethics of the NYS Public Officers Law §74 regarding conflicts of interest.

It is Downstate's policy that all executives, managers, physicians, other employees, voluntary physicians, and committee members act in the best interest of Downstate at all times and not engage in any activity in which private interests' conflict with Downstate interests. Generally, a conflict of interest exists when an obligation or a situation resulting from an individual's personal activities or financial affairs may adversely influence his/her judgement in the performance of his/her duty to Downstate. There may well be cases in which an apparent conflict of interest is more theoretical than real, but it is important to resolve such

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doubtful cases promptly. For the protection of both Downstate and the individual, it is essential that potential conflicts be fully disclosed and resolved, before they are realized. In all unclear cases, the individual should fully disclose the matter to the Downstate Vice President in charge of his/her department, who will then discuss the matter with the Office of General Counsel, VP-OCAS or other appropriate member of the Downstate Administration.

1. Officers and employees of the State government are restricted in the activities in which they may engage while in State service. Basically, they may not engage in activities that would create or appear to create a conflict with their public duties. Some of the specific restrictions are:
 - They may not sell goods or services to the State or any agency of the State except through a competitively bid contract.
 - They may not appear before any State agency or render services for compensation in a matter before any State agency in connection with such subjects as the purchase or sale of goods, ratemaking, funding or licensing.
2. More generally, State officers and employees must not have any interest in or engage in any business activity “in substantial conflict” with the discharge of their public duties. This restriction prohibits them from:
 - Disclosing confidential information acquired in the course of their official duties or using such information to further their personal interests.
 - Using or attempting to use their official position to secure unwarranted privileges or exemptions for themselves or others.
 - Giving reasonable basis for the impression that any person can improperly influence them or unduly enjoy their favor in the performance of their official duties, or that they are affected by the kinship, rank, position, or influence of any party or person.
 - Finally, State officers and employees should endeavor to pursue a course of conduct which will not raise suspicion among the public that they are likely to be engaged in acts that are in violation of their public trust.
3. The New York State Commission on Ethics and Lobbying in Government’s regulations restrict the outside activities of State officers and employees as follows:
 - Certain high-level officials, including all policy makers, are barred from serving as an officer of any political party or organization or serving as a member of a political party committee, including district leader or member of a national committee.
 - No salaried State officers or employees may engage in any outside activity that interferes or is in conflict with their duties.

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I. ACADEMIC / RESEARCH INTEGRITY

Downstate is dedicated to upholding the legal and ethical standards applicable to medical education and research, including Federal and State requirements relating to the protection of human subjects in research, the use of animals in research and the investigation and prevention of misconduct in scientific research.

All research involving human subjects must be submitted for review and approval to the Institutional Review Board (IRB), in accordance with Downstate's Assurance of Compliance with regulations for the protection of human subjects. Grant recipients must ensure that any IRB imposed restrictions and requirements are complied with fully.

All research and educational use of animals must be reviewed and approved by the Institutional Animal Care and Use Committee (IACUC). The care of research animals and facilities must be in compliance with Federal and State laws and regulations and any requirements imposed by the IACUC.

All (research) Investigators deemed to have responsibility for the design, conduct, or reporting of research must abide by Downstate's Research Conflicts of Interest Policy; which includes training and the disclosure and management of all significant financial interests that may jeopardize ethical research reporting.

All allegations concerning scientific misconduct shall be investigated in accordance with Downstate's Research Misconduct policy, as well as the Public Health Services requirements on research misconduct at 42 CFR §93. Misconduct in the context of research means fabrication, falsification, plagiarism, or other practices that seriously deviate from those that are commonly accepted for proposing, carrying out or reporting results from research.

Questions concerning alleged scientific misconduct or compliance with requirements for research involving human subjects or the care and use of research animals should be directed to Downstate's Office of Research Administration.

J. ENVIRONMENTAL LAWS AND OCCUPATIONAL SAFETY

Downstate will comply fully with all environmental laws and regulations. All hazardous materials and infectious wastes must be stored, handled and disposed of in full compliance with all laws, regulations and institutional policies. Unsafe storage or inappropriate release

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of such materials into the environment must be promptly reported. We will work cooperatively with the appropriate authorities to remedy any environmental contamination for which Downstate may be responsible.

Downstate will abide by all laws and regulations regarding occupational safety.

In the course of Downstate's operations, hazardous materials and infectious wastes may be used or generated. Downstate is financially and legally responsible for the proper handling and disposal of these materials.

It is essential that everyone at Downstate who deals with hazardous materials and infectious waste complies with environmental laws and regulations and follows the environmental safety procedures explained in Downstate's programs, policies and manuals. Employees are also expected to enable Downstate to:

- Comply with all laws and regulations governing the handling, storage and use of hazardous materials, other pollutants and infectious wastes;
- Comply with its permits that allow it to safely discharge pollutants into the air, sewage systems, water pollution control facilities, or onto or into land;
- Hire only reputable licensed services to transport and dispose of hazardous and polluted materials and infectious wastes; and
- Accurately maintain the records required by the environmental laws and regulations, including those that require precise description of the amount, concentration and make-up of hazardous materials or other regulated pollutants and infectious wastes that are used, stored, discharged or generated; and the time, place of origin, destination and transporter of hazardous materials, and discharge of pollutants. These records should be handled pursuant to proper Downstate policy.

No one at Downstate may participate in concealing improper discharge or disposal of hazardous materials, pollutants or infectious wastes. Any workforce member who has reason to believe that there have been violations of this or any other aspect of Downstate's environmental compliance procedures should report immediately to the supervisor or to the Compliance Hotline or to the VP-OCAS, who will in turn investigate in collaboration with Downstate's division of Environmental Health & Safety, and, when appropriate, notify pertinent government agencies, as required by law.

Both Federal and State laws regarding the promotion of occupational safety and avoidance of job-related hazards are designed to ensure that each of us works in a safe environment. Due regard and attention should be paid to those laws and regulations.

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K. [MAINTENANCE OF A DRUG AND ALCOHOL-FREE WORKPLACE](#)

The use, sale, purchase, transfer, possession or presence in one's system of illegal drugs is strictly prohibited. Similarly, the use, sale, purchase, transfer, possession or presence in one's system of alcoholic beverages while on duty is prohibited.

III. [ADMINISTRATION OF THE COMPLIANCE PROGRAM](#)

- A. [Written Policies and Procedures](#) – Downstate's Compliance Program describes the implementation and operation of the Program. The Code of Conduct outlined in this document embodies the compliance expectations of all Downstate workforce members and the expectation of their participation in the Program. Supplemental policies and procedures describing training requirements, reporting procedures, and investigation and response protocols are available through the Office of Compliance & Audit Services (OCAS). Relevant policies and procedures will be reviewed at least annually to ensure compliance. Due to the ever-evolving nature of Downstate's Compliance Program, workforce members are encouraged to check in with OCAS often for new or updated guidance.
- B. [A Designated Employee with Compliance Oversight Responsibilities](#) – The VP-OCAS shall be responsible for the day-to-day management and administration of this Program. The VP-OCAS's general responsibilities include:
- Overseeing and monitoring the implementation of the Compliance Program.
 - Developing and coordinating educational and training programs to ensure workforce compliance with Federal and State laws.
 - Monitoring guidance, alerts or other requirements issued by the Office of Inspector General, the Department of Health & Human Services, the Centers for Medicare & Medicaid Services, the NYS Office of Medicaid Inspector General and other authoritative sources.
 - Conducting regular internal compliance reviews and audits.
 - Developing a system that solicits and responds to complaints related to fraud or other ethical violations.

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- Investigating matters related to compliance and recommending the necessary corrective action plans or disciplinary measures.

In addition, the President shall designate certain executive employees to serve on a Compliance & Audit Oversight Committee (CAOC). The CAOC shall assist the VP-OCAS in the administration of the Program, including, without limitation, the investigation of complaints, as requested by the VP-OCAS or the President. The CAOC shall meet on a quarterly basis and receive reports from OCAS. Ongoing matters will be tracked via the CAOC agenda of follow up items to ensure issues are satisfactorily addressed. The CAOC quarterly meetings will be live, in person or virtual meetings, and will serve as an open forum for membership's direct communication with the Office of Compliance & Audit Services.

It is essential that all workforce members fully adhere to this Program. All Department Heads are responsible for the observation of this Program in their respective departments. If any workforce member has any question regarding the applicability or meaning of any section of this Program, s/he should address such question to the VP-OCAS, in writing, orally, or through the Compliance Line.

- C. [Training and Education](#) – Downstate recognizes the importance of communicating effectively its Code of Conduct and applicable Federal and State regulations to all workforce members and agents. Thus, it is the intent of Downstate to require all new hires to be appropriately trained as part of the orientation program provided to new employees of Downstate. New employee training is tailored, based on an employee's role/responsibilities and may include (but is not limited to) education on the following topics:

- Code of Ethics & Business Conduct
- Adherence by employees to Downstate's Compliance Program
- Deficit Reduction Act and associated fraud & abuse laws
- HIPAA Privacy & Security
- Documentation, coding and billing for Professional billing
- Documentation, coding and billing for Technical billing
- Compliance Line (Hotline) reporting system and employee obligation to report suspected violations
- Ethical and legal requirements in Research / Conflicts of Interest, Research Misconduct
- Documentation improvement tips for physicians, residents and allied health professionals
- Pertinent laws, including Stark Law, Anti-kickback Statute, and EMTALA

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The VP-OCAS will periodically update Downstate's training procedures and course offerings to ensure that all sessions and materials are reflective of the most recent developments and decisions in the law.

OCAS will provide generalized, in-person training at New Employee Orientation. Web-based, interactive training will be assigned and facilitated via Downstate's Learning Management System (LMS). OCAS will track all completions. Workforce members who fail to complete their assigned coursework may be subject to disciplinary action.

Ongoing and refresher training is assigned subsequent to initial employment based on high risk areas, new or updated laws, regulations and/or policies, and to ensure appropriate corrective action.

OCAS maintains the training records and reports detailing training activities for all workforce members. Summary reports of compliance with these requirements will be provided to the CAOC as necessary.

- D. [Open Lines of Communication](#) – Employees, faculty and other workforce members are required to come forward with any information regarding an actual or possible violation of this Code or Downstate policy and to cooperate fully in the investigation of any alleged violation. Downstate has established the following methods for workforce members to report – confidentially and anonymously – any questionable conduct or possible violation:

Reports may be made either in person, by telephone, or in writing to any of the following:

- Your supervisor or responsible Vice President
- Office of Compliance & Audit Services: (718) 270-4033, Compliance@downstate.edu, Box #1248
- Downstate University Counsel
- Downstate Human Resources
- HIPAA Privacy Officer: (718) 270-4033, Compliance@downstate.edu
- Information Security Officer
- Patient Relations
- Regulatory Affairs
- Downstate's Office of Diversity & Inclusion
- Downstate's Office of Research Administration
- Downstate Facilities Management & Development / Environmental Safety
- University Police

The Downstate directory may be consulted for up-to-date contact information for the offices noted above:

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<https://www.downstate.edu/about/search-directories/index.html>

Downstate's Confidential Compliance Line (Hotline) is a 24/7 hotline service, available as a reporting mechanism for suspected fraud, abuse, waste or other illegal or unethical conduct regarding students, employees, volunteers, and independent contractors. There are two methods for Compliance Line reporting:

- **Call 877-349-SUNY (7869)**
- **Report online by clicking the "[Compliance Line](#)" link in the footer at Downstate.edu**

There shall be no reprisals for good faith reporting of actual or suspected acts of fraud, waste or abuse, or violations of the Code or other wrongdoing or misconduct. However, an employee who makes an intentional false report or a report not in good faith may be subject to disciplinary action. Downstate will endeavor to keep the identity of anyone reporting a violation confidential, to the extent permitted by law, unless doing so prevents Downstate from fully and effectively investigating an alleged violation.

As referenced above, Downstate provides a Compliance Line as a means for workforce members to provide information to the VP-OCAS. The VP-OCAS, CAOC or other individuals as designated by the President will investigate any and all information provided.

E. [Disciplinary Policies to Encourage Participation](#) – Downstate recognizes the necessity to enforce the standards and procedures of its Compliance Program and to discipline those workforce members who violate the Program or negligently fail to detect an offense. All workforce members at Downstate will receive training relative to their obligations under the Program. Employees who fail to adhere to the standards of this Program will face disciplinary action, including termination. Depending on the facts and circumstances of each case, and in compliance with any applicable collective bargaining agreements, Downstate may take one or more of the following actions:

- Reprimand the workforce member;
- Place the workforce member on probation;
- Suspend the workforce member;
- Dismiss the workforce member / termination of employment or contract;
- Refer the employee for criminal prosecution; and/or
- Demand that the workforce member reimburse Downstate for any losses or damages resulting from the violation.

If a consultant or independent contractor is working for Downstate and does not comply with the Program, Downstate may:

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- Terminate the consultant or independent contractor's agreement with Downstate;
- Refer the consultant or independent contractor for criminal prosecution;
- Demand that the consultant or independent contractor reimburse Downstate for any losses or damages resulting from the violation; and/or
- Take any other actions that may be permitted by law or by Downstate's agreement with the consultant or independent contractor.

Downstate will also take disciplinary action against:

- Anyone who deliberately fails to report a violation or who deliberately withholds relevant and material information about a violation of the Program;
- A violator's supervisor, to the extent that the circumstances of the violation reflect inadequate supervision or lack of diligence;
- Any supervisor who directly or indirectly retaliates against someone who reports a violation of the Program;
- Any supervisor who encourages anyone to retaliate against someone who reports a violation of the Program; and
- Anyone who knowingly falsely accuses someone of violating the Program.

F. [Routine Identification of Compliance Risk Areas / Monitoring and Auditing Systems](#)

– Downstate will implement steps to monitor compliance with the Program. This will include monitoring and auditing to determine whether the Program is being adhered to and whether it is successfully serving its intended purpose. Compliance monitoring and auditing are aimed at ensuring adherence to general compliance policies and applicable Federal and State laws and regulations. Audits will include on-site visits; interviews with personnel involved in administration, operations, billing, reporting, and other related activities; review of documentation and other written materials; and identification of patterns or trends.

The VP-OCAS and the CAOC will monitor each section of the Compliance Program for operational effectiveness during the year. On an annual basis, the VP-OCAS will develop a Compliance & Audit work-plan, based upon Downstate's high-risk areas, as well as the Office of Inspector General and NYS Office of Medicaid Inspector General guidance and annual audit work-plan areas. The VP-OCAS, in conjunction with the CAOC, will:

- Identify the high-risk compliance issues facing Downstate;
- Establish priorities for addressing these risk areas;
- Coordinate monitoring activities and audits to review processes and control or reduce the identified risks;
- Follow up on audit recommendations to ensure effectiveness.

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Compliance monitoring and auditing will primarily focus on documentation, coding and billing of Medicare, Medicaid and other Federal health care programs, as well as other fraud & abuse and regulatory issues. All contracts with suppliers and agents will also be monitored for compliance with the Program.

- G. [A System for Responding to Compliance Issues](#) – When an offense is identified, it is the policy of Downstate to respond appropriately to the offense and to enjoin any further similar offenses. This will include amending Downstate’s Compliance Program to preclude and detect violations of law in the future.

After an offense or a crime has been detected and after an internal investigation has been conducted, Downstate will report the offense, as required, to the appropriate governmental authorities. All internal investigations at Downstate will be headed by the appropriate Supervisor, Director, Officer, Vice-President, President, Human Resource Department and/or OCAS in conjunction with the Office of General Counsel. The goal is to ensure that all legal obligations are fulfilled and all steps to prevent further violations are exhausted. In the event after a violation has occurred, it is determined that authorities should be notified, it will be the VP-OCAS’s responsibility, in conjunction with the President and the Office of General Counsel, to determine when and how the appropriate authorities should be apprised. At the conclusion of all internal investigations conducted by the VP-OCAS, and at the Office of General Counsel’s direction, a report of the investigative findings will be prepared.

The VP-OCAS, in conjunction with the President and Office of General Counsel, will report violations of law to SUNY Administration as necessary. Included in the report will be a full description of what transpired and what is being done to prevent similar conduct in the future.

- H. [Policies of Non-Intimidation and Non-Retaliation](#) – Downstate employs strict protections against intimidating and/or retaliatory practices in order to protect individuals in their good faith participation in the Compliance Program. No workforce member who, in good faith, reports potential issues and/or cooperates with the investigation of a compliance matter or corrective action, shall be retaliated against under the protection of Downstate’s Compliance Program.
- I. [Affected Contractors](#) – Affected contractors who provide Medicaid related services, perform billing or coding functions, monitor healthcare services furnished by or on behalf of Downstate are obligated to comply with this Program.

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Affected contractors must adhere to the compliance standards established by Downstate. These obligations include:

- Implementing and maintaining policies and procedures consistent with Downstate's Compliance Program;
- Participating in mandatory compliance training programs relevant to their roles/services provided;
- Undergo, or provide satisfactory evidence of, exclusion screenings to avoid conflicts with Federal or State exclusion lists, including the Office of Inspector General's List of Excluded Individuals / Entities (OIG LEIE), and the NYS Office of Medicaid Inspector General's Exclusion list;
- Reporting suspected fraud, waste, abuse, or other compliance issues to Downstate's VP-OCAS or via Downstate's Compliance Hotline.
- Observe and/or incorporate corrective action requirements as required by Downstate or regulatory authorities, when issues are identified.
- Retaining records related to Medicaid services in compliance with Federal and State retention schedules and provide access to these records, upon request, by Downstate or oversight agencies.

Downstate's Office of Compliance & Audit Services will monitor Affected Contractor participation in the Compliance Program via an annual mailer, including pertinent information about Downstate's Compliance Program. Affected contractors are required to respond in receipt of the materials and in affirmation of their compliance with the Program.

Affected Contractor's failure to comply with the obligations and requirements of Downstate's Compliance Program may result in contractually prescribed penalties, and/or contract termination.

IV. MAINTENANCE AND CERTIFICATIONS

OCAS will perform regular review and evaluation of the Compliance Program to ensure its effectiveness and its inclusion of relevant policies and procedures and regulatory requirements.

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- **Certification** - Downstate will attest annually via the 'Certification Statement for Provider Billing Medicaid' that the Compliance Program satisfactorily meets the requirements of the NYS OMIG and regulatory requisites, including the Deficit Reduction Act (DRA).

Downstate's Compliance Program is a living document. Workforce members and affected contractors are expected to check back routinely on Downstate's Office of Compliance & Audit website for changes and updates.