

# Compliance Program

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# CORPORATE COMPLIANCE PLAN

## **Introduction: General Description**

The Pharmerica, Inc.'s ("PMC") Compliance Department helps all PMC locations to accomplish its mission. The Compliance Department implements and carries out programs intended to ensure PMC operational and administrative areas follow applicable state and federal laws and regulations and meets its obligations. Compliance with applicable laws, rules, and regulations is integral to the long-term success of PMC.

To further define and ensure compliance at PMC, a risk assessment, focusing on areas such as controlled substance processing and resultant claims submissions to federal healthcare program payors, is performed at least annually. This assessment will be reviewed by key PMC leaders at least annually. Individual departments are required to perform tasks to monitor risks inherent to their function, such as overseeing day-to-day operational activities and performance management.

The goal is to create a solid system for tracking the requirements and obligations imposed on PMC, for determining whether these obligations are being met, and a process for correcting and preventing future instances of noncompliance. In addition, the PMC Compliance Plan should be prioritized to identify and address specific high risk areas more intensively. The Plan should be reviewed and updated periodically in accordance with standards established by regulators and accrediting organizations.

All PMC employees, Board members, contracted entities, and individuals, and anyone performing services in or for PMC, are responsible for following the Plan. The Compliance Department will use this Plan as the blueprint for how this will be accomplished.

The Plan includes the following sections:

- A. Purpose
- B. Code of Conduct
- C. Written Standards/Policies and Procedures
- D. Designation of Compliance Officer and Compliance Committee
- E. Education and Training
- F. Enforcing standards through well-publicized disciplinary guidelines
- G. Reporting
- H. Remediation & Corrective Action
- I. Monitoring & Auditing
- J. Licensure and Certifications
- K. Ineligible Screening Program Description
- L. Requests for Information from External Agencies

## **A. Purpose:**

The Plan is intended to provide reasonable assurance that PMC:

1. Complies with applicable federal, state, and local laws and regulations that are applicable to its operations;
2. Satisfies the conditions of the participation in all programs funded by the state and federal government and the terms of its other contractual arrangements;
3. Detects and deters criminal conduct or other forms of misconduct by officers, employees, agents, and contractors that might expose PMC and/or its principals to criminal or civil liability;
4. Promotes self-auditing and self-policing, and provides for, in appropriate circumstances, voluntary disclosures of violations of laws and regulations; and
5. Establishes, monitors, and enforces high professional and ethical standards.

## **B. Code of Conduct:**

The Pharmerica Code of Conduct, as the foundation of the PMC Corporate Compliance Program, explains in basic terms the way employees should conduct themselves while at work. The PMC Code of Conduct, along with our operational policies and procedures and the entire Plan, provides standards that support the importance of proper conduct and their impact on the integrity, honesty, and reputation of PMC. The policies expressed in this document are by no means exhaustive, but seek to provide the expectations for acceptable behavior with respect to PMC employees, executives, board members, vendors, subcontractors, competitors, and the community.

The PMC Code of Conduct sets forth:

1. PMC's full commitment to compliance with applicable federal and state healthcare programs requirements including customer service, controlled substance purchasing, storage and dispensing, boards of pharmacy compliance, claims submissions, complaint handling et al.
2. PMC's requirement that all employees, executives, board members, and contracted entities and individuals follow applicable federal and state rules, laws and regulations related to PMC's business operations
3. PMC's expectation for all employees, executives, board members, and contracted entities and individuals to report any suspected violations or ethical concerns to the Chief Compliance Officer ("CCO")
4. PMC's commitment to non-retaliation, non intimidation and the right to confidentiality and anonymity for any reports made to the CCO or "hotline" in good faith

The PMC Code of Conduct is made available, at the time of hiring, to PMC employees, who will acknowledge, in written form, receipt and understanding of the contents. Vendors, subcontractors, and other contracting entities will be advised of the principles of PMC's Code of Conduct and other required materials at the time of contracting and through execution of the respective contract and annually thereafter. The Code of Conduct may be updated annually and training is provided within thirty (30) days of hire. The Code of Conduct is readily available to all employees and other covered persons online through the PMC intranet and to others on the PMC internet site.

### **C. Written Standards/Policies and Procedures:**

Pharmerica (PMC) relies upon well-written, clear and concise policies and procedures to provide readily available training tools and a level of risk mitigation. It is the intent of PMC to comply with applicable federal and state laws, regulations, and guidelines applying to our organization. To support the objectives of these laws, regulations, and guidelines, specific policies and procedures have been or will be written, approved, and implemented. The finalized policies and procedures will be stored in a central location to maximize usage for reference and training purposes. The PMC set of policies, procedures, and unit guidelines will support a variety of different requirements:

1. Accreditation and Certification by respective agencies (OIG, DEA, CMS, respective state agencies)
2. Ensure adherence to industry recognized standards and compliance with applicable legal and regulatory requirements governing healthcare.
3. Internal reference and training purposes.

The PMC Compliance program places a high value on these documents. As a result, PMC's Compliance team will review the Compliance policies and procedures annually. Similar expectations will be held for policies and procedures related to controlled substance handling et al. These annual reviews should include review of any updates or changes in laws/regulations, technology and personnel impacting the document and update accordingly. These documents are intended for use in training and evaluating all employees.

### **D. Designation of Compliance Officer and Compliance Committee:**

#### **Compliance Officer**

The PMC Corporate Compliance Program is led by the Chief Compliance Officer (CCO). The CCO is charged with implementing and enforcing the Compliance Program requirements, as well as assisting PMC leadership with interpreting and responding to regulatory inquiries. The main focus of this role is to ensure that the regulations set forth by the main regulatory bodies (CMS, OIG, DEA, State Boards of Pharmacies) are understood and followed by all applicable areas inside PMC. The CCO has direct lines of communication with the CEO, PMC Board of Directors and through an interdepartmental group on the Compliance Committee.

The CCO is the key role responsible for:

1. Ensuring adequate and well-written policies and procedures are reviewed, updated, enacted and followed to meet the requirements imposed.
2. Report in writing directly to Pharmerica Board of Directors regarding compliance matters
3. Monitor day-to-day compliance issues and report as needed
4. Ensure PMC meets expectations related to the PMC onsite audit program for PMC pharmacy locations
5. Coordinate ongoing field-based compliance activities with local staff and regional management

Though the CCO is the point-of-contact for Compliance activities, all PMC employees, regardless of position or job function, are responsible for compliance with laws, rules, and guidelines, including, but not limited to:

1. Using all available resources to obtain and interpret information;
2. Identifying what is required to comply with laws and regulations governing department operations;
3. Implementing the selected action by the specified effective date to comply with the law/regulation; and
4. Informing the Compliance Department of all governmental or external investigations, routine or otherwise.

### **Compliance Committee**

The PMC Corporate Compliance Committee maintains an oversight role for the PMC Compliance Program. This Committee, composed of a cross-section of PMC as outlined on the Charter, meets at least quarterly to assist the Chief Compliance Officer and Compliance Department with meeting the requirements of the PMC Compliance program as well as identifying new/updated rules, regulations and operational challenges. This Committee owns the review and update of the Compliance Risk Assessment process. Additionally, this body is key in the mitigation and response to any known or suspected compliance risks or violations at PMC.

### **E. Education & Training:**

PMC has a training and education program in place that includes all employees, Board of Directors' members and other affected individuals as applicable. Other affected individuals includes persons required to be subject to the compliance program; all affected employees, all affected appointees and persons associated with the provider, all executives and all governing body members.

Staff education is provided through new employee orientation, periodic required in-services, and department-specific training. Failure to attend or complete required compliance training may result in progressive corrective action as detailed in the PMC Employee Handbook. Additionally, failure by management to provide education for employees may result in progressive corrective action.

The PMC Training program is divided into two parts:

1. New Hires: PMC strives to complete comprehensive compliance-related training within the first thirty (30) days of employment. This training includes privacy and security processes, code of conduct, human resource policies, anti-kickback, and focused departmental policies and procedures.
2. Annual Training and Education Programs: Annual training is required by state and federal laws in order for PMC to participate in certain government programs. A wide variety of training methods, including web-based tools, may be used to meet these requirements.

PMC continues to review the program annually through the Compliance Committee process to determine whether additional training is needed depending upon circumstances or regulatory climate.

## **F. Enforcing Standards through Well-Publicized Disciplinary Guidelines:**

PMC's Compliance Department assists PMC's Human Resources Department regarding disciplinary actions for persons who fail to comply with the compliance program, or otherwise engage in wrongdoing. Employees and others are expected to comply with PMC's code of business of conduct and ethics, which include the principles of honesty, lawfulness, and business ethics. Non-compliant behavior, authorizing, encouraging, facilitating, directing, participating in actions that violate Federal and state laws will lead to disciplinary action and sanctions (verbal warning, written warnings, progressive discipline, suspension and/or termination) and possible civil or criminal penalties. Employees and others have a duty to assist in the resolution of any compliance related issue. PMC's Code of Conduct is provided directly to all employees and is readily available via the PMC intranet. PMC disciplinary processes are clearly outlined in the PMC Employee Handbook which is provided to all new PMC employees and is available in the PMC Human Resources Department.

PMC's guidelines, as described in the PMC Employee Handbook, reflect clear and specific disciplinary policies and describe the consequences of violating the organization's standards of conduct. The appropriate disciplinary action shall be determined on a case-by-case basis after a thorough investigation into any allegations. PMC's policy is to apply discipline progressively whenever possible, uniformly, firmly and fairly to violators at all levels of the organization. Disciplinary actions range from a verbal warning up through termination. The Human Resources Department, with the assistance of the PMC Executive staff and Board of Directors, oversees the implementation of the disciplinary process. In addition to the steps outlined below to inform employees of the disciplinary policies, all vendors and subcontractors will be informed, via contract provisions, which violations may result in termination, or the execution of issue resolution clauses, of their respective contract.

## **G. Reporting:**

PMC employees, contractors, and others may use any of the following modes of communication to report issues to the Compliance Department:

1. A written summary forwarded by fax, e-mail, interoffice mail, or U. S. mail to either a member of management, a site specific compliance officer or the Chief Compliance Officer.
2. Orally in person or by telephone to a member of management, a site specific compliance officer or the Chief Compliance Officer.
3. Calling the "Hotline" at 800 793-7741 to provide confidential, anonymous reporting if desired.
4. Or directly to a state specific agency.

PMC will maintain lines of communication between the Chief Compliance Officer, members of the Compliance Committee, and our employees, managers, directors, executive team members, and our contracted entities. PMC encourages all employees and contractors to report issues of suspected non-compliance to a member of management or the Compliance Department. Issues are handled as outlined in the investigation and remediation sections of this Compliance Plan. Retaliation/Intimidation for reporting or discussing an issue, either within PMC or to an external

agency, is a violation of the PMC Compliance Program and any person found to have participated in retaliatory / intimidating action is subject to corrective action. Any instances of potential retaliation, retribution or intimidation should be reported to the Chief Compliance Officer immediately. These reports may be completed via the anonymous and confidential hotline available at all PharMerica locations and as noted above. The PMC CCO is required to maintain a log of all reports, investigation information and result information.

### ***Mandatory Reporting to Regulatory Authorities***

PMC is committed, by contract and licensure, to report a variety of operationally significant items related to the normal course of PMC business operations. These reports are produced in specific formats, specific timeframes, and to specified individuals within PMC and external entities as enumerated by the external entity. Authorized external entities, including CMS, OIG, DEA, State Boards of Pharmacy, State licensing entities, state office of Medicaid inspectors general, state departments of health and others establish the regulations related to reporting timelines, rules, contents and formats.

### ***Employees Duty to Report Potential Wrong-Doing***

Employees are expected to report potential misconduct, wrong-doing, or potential infringements of state or federal laws. This does not mean that an employee can avoid discipline for poor work or wrongful acts by proactively reporting their own misconduct. Good faith reporting is what PMC expects. Employees may use any appropriate reporting channel available, though it is typically most effective for an employee to report concerns to their immediate supervisor. For example, employees may approach Human Resources first regarding any issue associated with the employer-employee relationship, or that involves another PMC employee, including but not limited to: wages, hours, working conditions, harassment, discrimination, health and safety concerns, job duties and essential functions, or any concerns related to the employee life-cycle relative to employment. Alternatively, the “Hotline” is available for anonymous good-faith reporting of potential misconduct.

### ***Non-Retaliation/Non-Retribution/Non-Intimidation Policy***

PMC is committed to a free and open workplace. As stated in the PMC Employee Handbook, PMC leaders, peers and others are not permitted to engage in any form of retaliation, intimidation or retribution against an employee who reports, in good faith, a concern or participates in an investigation or compliance review. Any leader or employee who engages in such retribution, retaliation, intimidation or harassment of any kind is subject to discipline up to and including dismissal. Any employee that witnesses this type of behavior is bound to report the issue in compliance with the duty to report section stated in the PMC Employee Handbook and Code of Conduct.

PMC is also committed to a workplace free from intimidation by peers, leaders or others. PMC leaders, peers and others are not permitted to engage in any form of intimidation or retaliation for any reason including but not limited to: good faith participation in the compliance program, self-evaluations, audits and remedial actions, and reporting to appropriate officials. Any employee

that witnesses this type of behavior is bound/expected to report the issue in compliance as stated within the duty to report section.

#### **H. Remediation & Corrective Action:**

The Chief Compliance Officer, in conjunction with PMC senior leadership, shall develop a remediation process when a compliance violation is detected. It is designed to prevent a reoccurrence of the violation and is a key factor in evaluating the success of compliance efforts. Processes are designed on a case-by-case basis and may include:

1. Additional or modified education or training.
2. Corrective action/Disciplinary action
3. Developing new policies and procedures.
4. Revising existing policies and procedures.
5. Additional and/or modified monitoring and auditing.
6. Reporting to outside agencies (DEA, CMS, OIG, state boards of pharmacy, state departments of health, states offices of Medicaid Inspectors general et al)

The Chief Compliance Officer should be consulted on all issues that result from a significant compliance violation, affect multiple departments, involve government programs, and/or involve revisions or additions to the PMC Compliance Plan or applicable policies and procedures. The Chief Compliance Officer will review all compliance violations reported to an outside agency and monitor settlement of issues reported to outside authorities. These violations include all areas addressed the PharMerica Employee Handbook, Code of Conduct and this Compliance program including but not limited to: Harassment of any kind, violation of Non-Retaliation/Non-Retribution/Non-Intimidation policies, unethical behavior, and other illegal activities. Once complete, all documentation related to the investigation and remediation of a compliance issue is stored as required by law.

#### **I. Monitoring & Auditing:**

PMC is required, via state and federal laws as well as internal policies and procedures, to engage in systematic and thorough monitoring and auditing of key internal and external operations impacting the business operations of PMC. The PMC process begins with a risk identification and risk assessment process, which is accomplished by expecting all PMC employees to:

1. Identify those laws, rules, and regulations applicable to key operational areas of PMC.
2. Construct policies and procedures to assist PMC in complying with the identified rules and laws.
3. Develop and implement new policies and procedures and then monitor the affected areas to ensure compliance.

PMC must maintain active compliance monitoring and auditing activities related to the operations occurring at Pharmerica pharmacy locations and ensure compliance activities are occurring. The Pharmerica Compliance Department has a multi-faceted “work-plan” approach involving onsite auditing, desktop auditing, licensure/certification validation, education and monitoring of self-assessment activities.



**Audit Work-Plan Components:** The work-plan is driven by PMC's Compliance Plan, historical results, external agency requirements, risk assessment results and other sources.

### ***Onsite Master Audit***

The primary component of the PMC Work-Plan is the Onsite Master Audit. This comprehensive audit covers the majority of all Pharmerica locations over a 36-month period. The Master Audit covers a wide-range of operational, administrative and clinical compliance areas. This audit takes several days from pre-audit through post-audit results with all results captured on a scorecard. This scorecard is used by the PMC Operations group for corrective action, training and educational opportunities. Additionally, PMC's Compliance Department uses the scorecard as part of the selection criteria for the next component, the focused audit program.

### ***Focused Audit Program/Desktop Audit Program***

PMC will be targeting at-risk locations and those locations with specific critical deficiencies/opportunities. The focused audit program will utilize both desktop and onsite audit techniques with specific emphasis on controlled substances, prior Master Audit results, prior controlled substance desktop audits, high-dollar drugs, billings and payments, medical necessity, governance and other issues of significance to the Compliance Committee based upon the current regulatory environment. These audits will be used as assessment and corrective action tools along with activities completed by the Operational teams including monthly random controlled substance processing checks.

### ***Controlled Substance Policy Task Force***

Another structural component of the PMC Audit and Monitoring Program includes a cross-functional task force dedicated to process improvements related to controlled substance claims processing. The membership of the PMC Controlled Substances Policy Task Force is composed of the Chief Pharmacy Officer, members of the Pharmacy Operations Department and members of the Compliance Department. This task force has two main responsibilities. First, the task force is required to review, update, test and implement controlled substances policies and procedures to ensure consistency throughout the PMC organization. Secondly, each member is asked to contribute their knowledge and expertise pertaining to the risk areas associated with controlled substances to the PMC Compliance Department

### ***Internal Investigations including Hotline***

PMC enforces behavioral and operational standards through well-publicized disciplinary guidelines. These procedures ensure prompt response to detected offenses and development of corrective action initiatives. The Chief Compliance Officer will follow the existing policies and procedures related to good-faith reports of misconduct. These reports may come from a variety of direct or indirect sources, including anonymous reporting via the PMC Hotline. If any employees or contractors report a suspected compliance issue, the Chief Compliance Officer will document and track the status. The Chief Compliance Officer will also be responsible to report suspected fraud, waste or abuse cases to the respective federal and/or state agency.

The Chief Compliance Officer, along with any designee, investigates compliance issues to determine whether there were possible violations of applicable laws, rules, and regulations. The investigation process begins promptly with an initial report. The extent of the investigation and

involvement of others varies depending upon the issue. Investigations must be well documented with supporting documentation attached and logged. Disciplinary action or PMC response to an agency will be dealt with by the PMC General Counsel, Human Resources and/or the PMC Executive staff as applicable. All good-faith reports are protected by PMC's Non-Retaliation/Non-Retribution/Non-Intimidation policy as described herein and via a variety of intranet sources. Once an investigation is completed and all appropriate actions have been taken, documentation is stored by the Chief Compliance Officer for as long as needed to comply with the rules applicable to the case.

The results of all monitoring and audit programs, including the audited area's response to any identified concerns, are reported to management, the Compliance Committee, as well as external agencies which require regular reporting. All monitoring and audit work papers are kept as required by the respective retention period. Follow-up audits are completed as needed.

#### **J. Licensure Certification Program:**

PMC's Compliance Department uses the licensure/certification process to validate the status of each facility and to ensure PMC remains in compliance, in the licensure arena, with key federal authorities including, but not limited to, CMS, DEA, OIG as well as State Boards of Pharmacy and state regulators. The PMC Compliance Department has resources dedicated to handling the initial application and renewal of the applicable state and federal licenses and certifications necessary to ensure field operations continue seamlessly. These efforts are particularly sensitive whenever PMC engages in a purchase, move, construction or merger with a differing ownership entity.

#### **K. Ineligible Screening Program Description:**

Pharmerica's Screening for Ineligible Persons program was developed and approved with the assistance of the Office of Inspector General in 2005. This existing policy and procedure requires Pharmerica to "screen" all employees, contractors and vendors against the required exclusion lists (OIG and GSA/SAM) prior to employment or retention and then periodically (at least quarterly) thereafter. As stated in the policy, Pharmerica meets or exceeds the stated requirements in terms of breadth of those screened and frequency by conducting these screenings monthly for all. Pharmerica has employed automation to assist in the ongoing screening of the existing Pharmerica employee, contractor and vendor universe. However, manual processes are still utilized as needed in certain circumstances for instant results or if an investigation warrants a review between screenings.

#### **L. Requests for Information from External Agencies:**

External regulatory and law enforcement agencies frequently request information from PMC. Departments should send a copy of all non-routine requests to the PMC General Counsel or their designee. The PMC General Counsel will determine the content and personnel involved in any response to the requesting agency.

All those designated to respond to the agency must ensure an approval from the General Counsel and a copy of the response is stored by the PMC Legal Department, at least one day before it is

due to the external agency. If the required approval is not received by the date due, the employee must work with their department leader and the General Counsel, to ensure the response is made completely and within the required timeframe. The Compliance Department, as part of the facility audit process, may review selected requests, after submission, to ensure internal consistency, review patterns in possible violations of regulations, and categorize areas of increased scrutiny by external agencies.

***Routine Inspections by Federal/State Agencies***

Federal and state agencies will visit PMC facilities as part of annual or regular inspections as required by the licensure or state regulation. Each PMC facility is required to notify the PMC Compliance Department when an inspection occurs so that the PMC Compliance Department can ensure support and resources are aligned as needed as well as for tracking purpose.

***Responding to Search Warrants***

If a search warrant is served on any PMC employee, PMC employees must fully comply with the warrant and cooperate with the agents serving the warrant. It is absolutely critical that no employees interfere with the agents in any way during their search or prevent them from accessing anything listed in the search warrant. Any interference by PMC could constitute an obstruction of justice. PMC also wants to exercise and preserve all of our rights afforded by the search warrant process, so upon presentation of the search warrant, the receiving employee shall follow the instructions as explained in the policy and procedures and handouts related to the P&P titled RCP6-Government Investigations.

**M. Appendix/Addenda (state laws)**

## ***New York Region Addendum:***

### Corporate Compliance, False Claims Act and Whistleblower Provisions and NY Laws and Regulations

**All New York subsidiaries of PharMerica Inc.,** are committed to prompt, complete and accurate billing of all services provided to individuals. **All New York subsidiaries of PharMerica Inc.** and its employees, executives, board members, contractors and agents/vendors shall not make or submit any false or misleading entries on any claims. No employee, contractor or agent shall engage in any arrangement or participate in such arrangement at the direction of another person, including any supervisor or manager that results in the submission of false or misleading entry on claims or documentation of services that result in the submission of a false claim.

It is the policy of **All New York subsidiaries of PharMerica Inc.** to detect and prevent fraud, waste and abuse in federal healthcare programs. This Policy explains the Federal False Claims Act (31 U.S.C. §§ 3729- 3733), the Administrative Remedies for False Claims (31 USC Chapter 38 §§3801-3812), the New York State False Claims Act (State Finance Law §§187-194) and other New York State laws concerning false statements or claims and employee protection against retaliation. This policy also sets forth the procedures All New York subsidiaries of PharMerica Inc. have put into place to prevent any violations of federal or New York State laws regarding fraud or abuse in its health care programs. This policy applies to all employees, including management, contractors and other affected individuals. Other affected individuals includes persons required to be subject to the compliance program; all affected employees, all affected appointees and persons associated with the provider, all executives and all governing body members. For the purposes of this policy a contractor or agent is defined as:

*Any contractor, subcontractor, agent, or other person which or who, on behalf of All New York subsidiaries of PharMerica Inc., furnishes, or otherwise assists in the furnishing of Medicaid health care items or services, or who may perform billing or coding functions.*

**OVERVIEW OF RELEVANT LAWS:** The set of laws and code citations discussed below are meant to provide a summary of the most impactful federal and New York state laws and code citations impacting All New York subsidiaries of PharMerica Inc. The citations listed below are meant to be studied and followed by all affected individuals to this Compliance Program. Several Policies and procedures as well as all educational and training references made to applicable laws and regulations include all of the citations below by reference.

**I. the False Claims Act (31 U.S.C. §§ 3729-3733):** The False Claims Act is a federal law designed to prevent and detect fraud, waste and abuse in federal healthcare programs, including Medicaid and Medicare. Under the False Claims Act, anyone who "knowingly" submits false claims to the Government is liable for damages up to three times the amount of the erroneous payment plus mandatory penalties of \$5,000 to \$10,000 for each false claim

submitted. The law was revised in 1986 to expand the definition of "knowingly" to include a person who:

1. Has actual knowledge of falsity of information in the claim;
2. Acts in deliberate ignorance of the truth or falsity of the information in the claim; or Acts in reckless disregard of the truth or falsity of the information in a claim

False Claims suits can be brought against individuals and entities. The False Claims Act does not require proof of a specific intent to defraud the Government. Providers can be prosecuted for a wide variety of conduct that leads to the submission of a false claim including but not limited to:

1. Knowingly making false statements;
2. Falsifying records
3. Submitting claims for services never performed or items never furnished;
4. Double-billing for items or services;
5. Using false records or statements to avoid paying the Government;
6. Falsifying time records used to bill Medicaid; or
7. Otherwise causing a false claim to be submitted.

#### **Whistleblower or “Qui Tam” Provisions:**

In order to encourage individuals to come forward and report misconduct involving false claims, the False Claims Act contains a "Qui Tam" or whistleblower provision. The Government, or an individual citizen acting on behalf of the Government, can bring actions under the False Claims Act. An individual citizen, referred to as a whistleblower or "Relator," who has actual knowledge of allegedly false claims may file a lawsuit on behalf of the U.S. Government. If the lawsuit is successful, and provided certain legal requirements are met, the whistleblower may receive an award ranging from 15%-30% of the amount recovered.

Employee Protections: The False Claims Act prohibits discrimination by All New York subsidiaries of PharMerica Inc., against any employee for taking lawful actions under the False Claims Act. Any employee who is discharged, demoted, harassed, or otherwise discriminated against because of lawful acts by the employee in False Claims actions is entitled to all relief necessary to make the employee whole. Such relief may include reinstatement, double back pay, and compensation for any special damages, including litigation costs and reasonable attorney fees.

Administrative Remedies for False Claims (31 USC Chapter 38. §§3801-3812): This federal statute allows for administrative recoveries by federal agencies including the Department of Health and Human Services, which operates the Medicare and Medicaid Programs. The law prohibits the submission of a claim or written statement that the person knows or has reason to know is false, contains false information or omits material information. The agency receiving the claim may impose a monetary penalty of up to \$5,500 per claim and damages of twice the amount of the original 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 imposition of fines and penalties is made by the administrative agency and not by prosecution in the federal court system.

## **II. New York State Laws:**

### **Civil and Administrative Laws**

New York State False Claims Act (State Finance Law §§187-194). The New York State False Claims Act closely tracks the Federal False Claims Act. It imposes 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 be responsible for the government's legal fees.

The Government, or an individual citizen acting on behalf of the Government (a "Relator"), can bring actions under the New York State False Claims Act. If the suit eventually concludes with payments back to the government, the party who initiated the case can recover 15% - 30% of the proceeds, depending upon whether the government participated in the suit. The New York State False Claims Act prohibits discrimination against an employee for taking lawful actions in furtherance of an action under the Act. Any employee who is discharged, demoted, harassed, or otherwise discriminated against because of lawful acts by the employee in furtherance of an action under the False Claims Act is entitled to all relief necessary to make the employee whole.

### **Social Service 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 up to three times the amount of the incorrectly paid claim. In the case of non-monetary false statements, the local Social Service district or State 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 five years, a penalty up to \$7,500 may be imposed if they involve more serious violations of the Medicaid rules, billing for services not rendered, or providing excessive services.

### **Social Service 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

#### Service Law § 366-b, Penalties for Fraudulent Practices

Any person who, with intent to defraud, presents for payment any false or fraudulent claim for furnishing services or merchandise, knowingly submits false information for the purpose of obtaining Medicaid compensation greater than that to which he/she is legally entitled to, or knowingly submits false information in order to obtain authorization to provide items or services shall be guilty of a Class A misdemeanor. 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.

#### Penal Law Article 155, Larceny

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

#### Penal Law Article 175, Written False Statements

There are four crimes in this Article that relate to filing false information or claims. Actions include falsifying business records, entering false information, omitting material information, altering the company's business records, or providing a written instrument (including a claim for payment) knowing that it contains false information. Depending upon the action and the intent, a person may be guilty of a Class A misdemeanor or a Class E felony.

#### Penal Law Article 176, Insurance Fraud

This Article applies to claims for insurance payment, including Medicaid or other health insurance. The six crimes in this Article involve intentionally filing a false insurance claim. Under this article, a person may be guilty of a felony for false claims in excess of \$1,000

#### Penal Law Article 177, Health Care Fraud

This Article 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), he/she knowingly 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 he/she is not entitled. Health Care Fraud is punished with fines and jail time based on the amount of payment inappropriately received due to the commission of the crime.

### New York Labor Law §740

An employer may not take any retaliatory personnel 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.

This law offers protection to an employee who:

1. 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 that presents a substantial and specific danger to the public health or safety, or which constitutes health care fraud (knowingly filing, with intent to defraud, a claim for payment that intentionally has false information or omissions);
2. 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 the employer; or
3. objects to, or refuses to participate in any such activity, policy or practice in violation of a law, rule or regulation.

The employee's disclosure is protected under this law only if the employee first brought up the matter with a supervisor and gave the employer a reasonable opportunity to correct the alleged violation. The law allows employees who are the subject of a retaliatory action to bring a suit 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 care 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

Under this law, 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 under this law 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 the 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 care 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.



## **Systems for Reporting**

All affected individuals of All New York subsidiaries of PharMerica Inc., employees, board members and executives and contractors/agents/vendors have an affirmative obligation to report any ethical misconduct or compliance concerns. Anyone who suspects noncompliance with any laws, rules or regulations must report their concerns to any of the following:

- 1-Their supervisor
- 2-Local Compliance Officer
- 3-Corporate Chief Compliance Officer 502-627-7404
- 4-Contact the PMC “Hotline” 1-800-793-7714

### **OR**

HHS Office of Inspector General:

- Phone: 1-800-HHS-TIPS (1-800-447-8477) or TTY 1-800-377-4950
- Fax: 1-800-223-8164
- Email: [HHSTips@oig.hhs.gov](mailto:HHSTips@oig.hhs.gov)
- Online: <https://forms.oig.hhs.gov/hotlineoperations/index.aspx>

For Medicare Parts C and D:

- National Benefit Integrity Medicare Drug Integrity Contractor (NBI MEDIC) at 1-877-7SafeRx (1-877-772-3379)

For all other Federal health care programs:

- CMS Hotline at 1-800-MEDICARE (1-800-633-4227) or TTY 1-877-486-2048

HHS and U.S. Department of Justice (DOJ): <https://www.stopmedicarefraud.gov>

### **OR**

NYS OMIG-1-877-87 FRAUD (1-877-873-7283)

NYS Department of Health  
Corning Tower  
Empire State Plaza,  
Albany, NY 12237

It shall be stressed that there is a non-intimidation/non-retaliation policy in place that protects all “good faith participation” in the compliance program. This includes but is not limited to; reporting of actual or potential issues or concerns, including but not limited to;

any action or suspected action taken by or with Pharmerica that is illegal, fraudulent or in violation of an adopted policy.

Cooperating with or participating in the investigation of such matters;

Assisting with or participating in self evaluation, audits, and/or implementation of remedial actions; or reporting to appropriate regulatory officials as provided in New York State Labor Law 740 & 741

No violation reported by an employee in good faith will be the sole reason for subjecting an employee to discipline

All New York subsidiaries of PharMerica Inc. Policies:

1. All New York subsidiaries of PharMerica Inc. will provide training and re-training yearly to all its employees, and make trainings available to “all affected individuals”. Training will be provided to all new employees as part of the new employee orientation.
2. All New York subsidiaries of PharMerica Inc. will perform billing activities in a manner consistent with the regulations and requirements of third party payers, including Medicaid and Medicare.
3. All New York subsidiaries of PharMerica Inc. will conduct regular auditing and monitoring procedures as-part of its efforts to assure compliance with applicable regulations.
4. Any employee, contractor, agent/vendor, or “affected individual” who has any reason to believe that anyone is engaging in false billing practices or false documentation of services is expected to report such practice. Any person may report directly to PharMerica's, Chief Compliance Officer or local FWA Compliance officer at our anonymous “hotline” 1-800-793-7741 or directly to NYS DOH at 1-877-87FRAUD.
5. All New York subsidiaries of PharMerica Inc. will report and the Corporate Chief Compliance Officer will respond to reports or reasonable indications of suspected non-compliance by commencing a prompt and thorough investigation of the allegations to determine whether a violation has occurred.
6. Any form of retaliation against any employee who reports a perceived problem or concern in good faith is strictly prohibited.
7. Any employee who commits or condones any form of retaliation will be subject to discipline up to, and including, termination.

Procedures:

1. The Chief Compliance Officer will ensure that all employees and “all affected individuals” receive training related to the contents of this policy and the False Claims Act. The Chief Compliance Officer will ensure that records are maintained to document the receipt of trainings.
2. The Chief Compliance Officer will assure that this policy and procedure is attached to any contract with outside contractors or agents/vendor doing business in NY.