



# **CORPORATE COMPLIANCE PLAN**

**Last Revision Approval- February 2024**

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## CORPORATE COMPLIANCE PLAN

### I. ORGANIZATION OVERVIEW

Birch Family Services is an entity incorporated under the laws of the State of New York and is governed by a Board of Directors consistent with the provisions of our by-laws and articles of incorporation.

Birch Family Services is approved by the:

- New York State Education Department (SED) to provide preschool and school age (Preschool through Grade 12) special education services and programming pursuant to the provisions of Title 6, Article 89 of the New York State Education Law (i.e.; Chapter 853 and Section 4410 services and programming);
- New York State Education Department/Adult Career and Continuing Education Services-Vocational Rehabilitation (ACCES-VR) to provide vocational services and programming pursuant to Title I, Article 21 of the New York State Education Law;
- New York State Office of Children & Family Services (OCFS) to provide childcare services and programming pursuant to the provisions of Article 6, Title I, Section 390 of the New York State Social Service Law;
- New York City Department of Health and Mental Hygiene/Bureau of Child Care (DOHMH) to provide group childcare services and programming pursuant to the provisions of Article 47 of the New York City Health Standard / Code;
- United States Department of Health and Human Services, Administration for Children and Families, Office of Head Start (ACF) to provide Head Start services and programming pursuant to the provisions of 42 CFR Chapter I 05 Subcharter II;
- New York State Office of People with Development Disabilities (OPWDD to provide residential, day, vocational, and other services and programming to individuals with intellectual and developmental disabilities pursuant to the provisions of Article 16 of the New York State Mental Hygiene Law

Birch Family Services is subject to the following additional laws and regulations:

- Federal Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. §1232g) and regulations thereunder (34 CFR Part 99);
- Individuals with Disabilities Education Act (IDEA) and regulations thereunder (34 CFR Part 300); and

- Health Insurance Portability and Accountability Act (HIPAA) and regulations thereunder (Title 45) including Privacy Rule and Breach Incident Requirements
- Federal and NYS False Claims Acts
- Social Services Law, Section 145b False Statements
- Social Services Law, Section 145c Sanctions
- Social Services Law, Section 363-d
- Social Services Law, Section 366-b
- New York State Labor Law sections 740 and 741
- NYCRR Title 18, Part 521
- State Finance Law 187-194
- Penal Law Article 175
- Penal Law Article 176
- Penal Law Article 177
- Federal 42 USC 1396a(a)(68)
- Federal 31 USC 3729-3733 and Ch. 38

In accordance with the terms of such federal, state, or local governmental agency approvals and consistent with the terms of certain contracts and/or agreements with specific federal agencies, state agencies and/or local governmental agencies on whose behalf Birch Family Services provides such approved services, Birch Family Services currently operates the following programs and provides the following services:

- Preschool special education programs and services including multidisciplinary developmental evaluations (MDE), special classes in integrated settings (SCIS), and both full- and half-day special education classes (SC)
- School age special education day programs and services, grades K-2 and 7-12
- Children's Residential Project (CRP) program and services, grades 7-12 (under the authority of both SED and OPWDD)
- Childcare programs and services for typically-developing children and those with special needs, EarlyLearn (EL), and Universal Pre-Kindergarten (UPK)
- Residential programs and services for adults and children with autism and other intellectual and developmental disabilities, including individualized residential alternatives with residential habilitation (IRA-IRH) and intermediate care facilities for individuals with intellectual and developmental disabilities (ICF/IID) and independent supported housing.
- Habilitation programs and services for adults and children with autism and other developmental disabilities, including group day habilitation (GDH), community habilitation (CH), and other programs and services to facilitate social development and independent community living
- Employment programs and services for individuals with autism and other developmental disabilities including pre-vocational services and supported employment under the authority of OPWDD and assessment, work readiness, and job placement services under the authority of ACCES-VR, and other programs and services to facilitate the attainment and maintenance of employment

- Planning, coordination, and other support services for individuals with autism and other developmental disabilities and their families, including plan of care services and supports (PCCS), family education and training (PET), and other programs and services to facilitate life planning and personal goal attainment

Training and consultation services for education professionals, other professionals, school districts and other provider agencies in the education and training of children and adults on the autism spectrum and mandated and other professional-development trainings relevant to these audiences. The internal structure of Birch is evidenced in the agency's organization chart.

## **II. MISSION, VALUES AND CULTURE:**

Birch Family Services empowers individuals with autism and developmental disabilities to lead fulfilling lives. This is accomplished by providing the finest education, habilitation, prevocational employment, and residential services to people with autism and other developmental disabilities and to help their families overcome the lifelong obstacles they face in raising children with special needs. We aim to empower the people we support and assist them to build a future they desire

Our values reflect a commitment to quality services that are individualized, person-centered. Birch utilizes a strengths-based philosophy that recognizes the abilities and skills of the people we support. This includes but is not limited to the engagement of individuals and families in a manner that facilitates choice, the promotion of community inclusion that ensures people have access and are able to participate in their communities and the professional development of our workforce and providing training to other organizations and the public to assist individuals in achieving their fullest potential.

Our culture is compassionate, dynamic, forward-thinking, and innovative. This ensures our ability to understand the complex and diverse needs of individuals and families we support, including a sensitivity to cultural differences, and to guide individuals with developmental disabilities of all ages through a complex and changing service system in order to obtain the best services and supports available to them to fulfill their goals.

### **III. CORPORATE COMPLIANCE OVERVIEW**

In furtherance of its Mission Statement, Birch Family Services has established a Corporate Compliance Plan (the "Plan"), which promotes an organizational culture that encourages ethical conduct and a commitment to compliance with the laws, rules and regulations that govern our operations while enhancing quality services to the children, adults, and families we support. The Program integrates various systems of operations with an emphasis on internal and external audits, reviews, benchmarks and trends, is based on effective and open lines of communication and relies on measurements to assure sustainability and success. Birch creates and fosters a safe environment to discuss compliance issues without fear non-retaliation and/or intimidation. The Plan is incorporated into our operations, which are committed to high standards of performance and quality of services.

## IV. **COMPLIANCE PLAN**

### **A. Overview**

In addition to any other program, policy or procedure relating to the organization or operation of Birch Family Services, Birch Family Services has developed, adopted and implemented a program and plan consistent with the provisions of Title 18 NYCRR Part 521, all applicable Medicaid and Social Service Laws, OMIG Corporate Compliance Regulations and Guidance, False Claims Act and HIPAA Privacy Rule governing Compliance Plans for medical and social services providers, the components, referred to as the seven elements of an effective Compliance Plan, of which are set out below, including, but not limited to:

Element #1 – Written Policies and procedures that address all elements, that describe compliance expectations as embodied in a Standard / Code of conduct including those to address all elements, a policy of non-intimidation & non-retaliation (Whistleblower Protections), Conflicts of Interest, confidentiality and security of PHI and PII of persons supported

Element #2 – Designate a Compliance Officer (CO) who is vested with responsibility for day-to-day Plan operation and establish & maintain a Corporate Compliance Committee. chaired by the CO with representation from all parts of the organization.

Element #3 - Compliance Program training and education of employees and other affected individuals including interns, volunteers, independent contractors.

Element # 4- Lines of communication to CO.

Element #5- Disciplinary standards & policies to encourage good faith Plan participation.

Element #6 – Auditing & Monitoring- A system for routine identification of compliance risk areas

Element #7 – A system for responding to compliance issues, as they arise.

### **B. Implementation of the Plan**

The Plan is effective immediately. All employees, officers, directors, and agents of Birch Family Services shall be provided with a copy of this Plan and shall execute an acknowledgement of same, at which point they shall be expected to comply with the terms of the Plan. All employees, officers, directors and agents shall be instructed to direct any questions or concerns about the Plan to the Compliance Officer.

## **V. STANDARD / CODE OF CONDUCT AND BUSINESS ETHICS**

### **A. Overview**

Birch Family Services believes that a well-articulated Standard / Code of Conduct and Business Ethics (Standard / Code) provides the necessary context within which all members of our organization should function-a context that reflects the duties each individual owes to Birch Family Services and the children, adults, and families we support. Such a Standard / Code not only provides a framework within which our employees and administrators engage with each other and the children, adults, and families we support, but also provides necessary guidance to employees and other affected individuals on addressing compliance issues through clear written policies and procedures that describe compliance expectations.

The Standard / Code of Conduct and Business Ethics (Standard / Code) is designed to be clear, non-technical and easily understood to enhance its effectiveness. It has been approved by the Board of Directors of Birch Family Services and is reviewed annually thereafter to determine what, if any, modifications or changes are necessary to assure its continued effectiveness.

The Standard / Code applies to all employees, officers, directors, interns, volunteers, independent contractors and agents of the organization. It is intended to elaborate upon and supplement, but not replace, any obligations that otherwise exist under law or regulation, as well as the policies and procedures of applicable governmental agencies and Birch Family Services as provided in Birch Family Services' employee handbook or other statements.

The components of the Standard / Code of Conduct include the following:

- Truthfulness
- Confidentiality
- Legality
- Avoidance of Conflict of Interest
- Quality of Care
- Non-Retaliation / Non- Intimidation

Each of these components is described in detail, below.

#### **1. Truthfulness**

All employees, officers, directors, interns, independent contractors and agents of Birch Family Services are expected to be truthful and honest at all times in conducting the affairs of Birch Family Services. This includes, but is not limited to, truthfulness in completing internal and external hard-copy and electronic documents on behalf of Birch Family Services, as well as in oral communications both with internal Birch Family Services staff and externally on behalf of Birch Family Services.

The ethics of truthfulness must be reflected in all activities in which individuals associated with Birch Family Services engage, including, but not limited to, the following:

#### **2. Program and Service Record Keeping**

"Program and service records" mean any file, evaluation, report, study, letter, telegram, minutes

of meetings, memorandum, summary, interoffice and intra-office communication including emails and texts, memorandum reflecting an oral conversation, a handwritten or other note, chart, graph, data sheet, film, videotape, slide, microfilm or microfiche or in computer/digital readable form. Such records include all such materials pertaining to a child's, adult's, or family member's participation in any program or service provided by Birch Family Services and documentation of the performance of activities including, but not limited to:

- written correspondence with or regarding the child, adult or family
- notes recording any relevant discussions with parents, other providers, regulatory or funding agencies, or municipalities regarding the child, adult, or family
- documentation of written notice(s) (if any) sent to an adult Birch supports or parent or other family member by the provider, including date of notice
- signed and dated parental consents relevant to service delivery and/or disclosure of information
- Service Plans (e.g., IEP, Life Plan, Staff Action Plans, etc. ) and related documents, including amendments
- service authorizations
- documentation demonstrating the provisions of services, including contact logs, sign-in sheets, session/progress notes, etc.
- attendance records
- ongoing assessments related to the services provided
- medical records
- physician orders and/or prescriptions
- medication administration records
- other records pertaining to the child, adult, or family
- all forms used internally by Birch

Such records must be:

- dated, and, as applicable, bear original signatures and initials or acceptable method of electronic signature.
- accurate and appropriately descriptive of the activity
- contemporaneous with the activity
- free from any deceptive or misleading alteration; if altered, documentation of the process and reasons for the alteration must be entered in the record
- maintained in the ordinary course of business; and
- maintained, retained, and destroyed consistent with professional licensure laws and applicable guidance from regulatory agencies and the policies and procedures of Birch Family Services regarding maintenance, retention, and destruction of records.

In the absence of specific guidance to the contrary from SED, OCFS, OPWDD, or any other regulatory agency, the principles set out above apply equally to all of the programs and services operated by Birch Family Services. Any additional record keeping requirements, applicable to specific programs and services, are stipulated in the Birch record retention and

destruction policy.

### **3. Confidentiality**

The confidentiality of a child's, adult's or family member's information is a cornerstone of Birch Family Services' organizational ethos. All such information shall be treated with discretion, even internally. All disclosures of such information, even to a child's or adult's parent, guardian or other members of the child's or adult's support team, shall be limited to the information necessary to disclose as required by the purpose of the disclosure, and shall at all times be within the limits of applicable laws and regulations, as well as the government's and Birch Family Services' policies and procedures. Accordingly, all employees, directors, officers and agents of Birch Family Services are responsible for ensuring the confidentiality and security of all protected health information (PHI) and any personally identifiable information (PII) in all program and service records, both paper and electronic format as defined above, consistent with the provisions of the following federal laws and regulations:

- Family Educational Rights and Privacy Act (FERPA);
- Health Insurance Portability and Accountability Act (HIPAA); Privacy Rule, Breach Incident Requirements
- Confidentiality of Information (in Part 300 of Title 34 Subtitle B, Chapter III- Special Education and Rehabilitative Services)
- US Standard / Code, Title 20 (Education), Section 1232g "Family educational and privacy rights";

and the following New York State laws and regulations:

- NYS Education Law, Title I, Article I, Section 2-d "Unauthorized use of personally identifiable information" and "Parents bill of rights for data privacy and security"
- Part 200 of the New York Standard / Code of Rules and Regulations as referenced in the SED Memorandum: "Changes to the New York State Procedural Safeguards Notice: Rights for Parents of Children with Disabilities, Ages 3-21" issued by SED (April 2014)

and any other applicable provisions of law governing confidentiality of records.

Specifically, the Compliance Officer, or his/her designee, shall ensure that:

Program managers / supervisors :

- be responsible for ensuring the confidentiality and security of protected health information (PHI) and personally identifiable information (PII) in a child's, adult's, or family member's program and service records
- ensure that all program and service records containing PHI and PII are maintained in secure locations such as locked file cabinets or, while traveling, are in a secure brief case or file
- ensure that when program and service records contain information about multiple individuals supported by Birch, a parent who requests access to his/her child's record only receives the record (s) pertaining to that child/family; information about anyone else will be redacted

- follow the Birch records request process; obtain CO approval prior to disclosure
- maintain a record of any individual who accesses a child's, adult's, family member's program and service records and the purpose for which the record was accessed (with the exception of the parent, employees of government agencies regulating or contracting with Birch Family Services and who are acting within their official capacities, and staff or other agents of Birch Family Services authorized to access the program and service records of the particular individual.)
- assure that all employees, directors, officers, agents, contractors, consultants, interns, and volunteers are informed about and are required to adhere to the confidentiality policies and procedures
- adhere to all legal requirements that protect program and service records containing sensitive information (such as sexual or physical abuse, HIV status, treatment for mental illness and/or substance abuse, parentage, etc.)
- ensure the confidentiality of all information maintained in an electronic format; and
- should any question arise whether documents containing Medicaid identifying information may be released, contact the Birch Compliance Officer who will as needed, contact New York State Department of Health's Division of Legal Affairs, Bureau of Medicaid Law at (518) 408-1495, as directed by guidance documents governing confidentiality.

#### **4. Legality**

Birch Family Services is committed to conducting all of its affairs in accordance with all applicable federal, state and local laws and regulations and complying with the terms of its contracts for the provision of programs and services. The agency and its personnel access many resources to keep abreast of changing requirements and amendments to laws and regulations that have an impact on service quality, agency functioning, and procedures, including, but not limited to, the following:

- Membership in professional organizations such as:
  - Interagency Council of Developmental Disabilities Agencies (IAC)
  - Day Care Council of New York
  - Health Care Compliance Association (HCCA)
  - American Institute of Certified Public Accountants (AICPA)
  - Financial Management Association (FMA)
  - American Speech-Language and Hearing Association (ASHA)
  - National Association of Social Workers (NASW)
  - Society for Human Resource Management (SHRM)
  - The American Network of Community Options and Resources (ANCOR)
  - NY Alliance for Inclusion and Innovation
- Frequent review and analysis of material posted on critical websites, such as:
  - New York State Office of the Medicaid Inspector General
  - New York State Office of the State Comptroller
  - New York State Education Department (Special Education, ACCES-VR, Office of the Professions, and Office of Teaching Initiatives)
  - New York City Department of Education (e.g. Office of Auditor General, Special Education, UPK)
  - New York City Department of Health and Mental Hygiene
  - New York City Office of the Comptroller
  - New York State Office of People with Developmental Disabilities

- o US Department of Health and Human Services, Office for Civil Rights
- Birch Family Services as needed and as available, will also:
  - o Consult with other agencies in the industry
  - o Consult with qualified legal and accounting professionals
  - o Review of resources provided by independent consultants
  - o Attend professional conferences, webinars and workshops.

Birch Family Services' ability to meet its obligation to embody legality in all of its actions is directly related to our active participation in the community of service providers and our attentiveness to the extensive body of literature and information available. Birch Family Services views this continual review and analysis of resources and information as the mechanism to:

- o remain current as to issues of quality services provision; identify potential risk areas;
- o and continually improve our practices, policies, procedures and internal controls based on a clear and comprehensive understanding of emerging requirements, standards of best practice, and recent trends in the fields of service in which we participate.

## **VI. FALSE CLAIMS ACT**

### **A. Federal False Claims Act**

The False Claims Act imposes liability on any person who submits a claim to the federal government, or submits a claim to entities administering government funds, that he or she knows (or should know) is false. An example may be a physician who submits a bill to Medicare for medical services he/she knows he/she has not provided. The False Claims Act also imposes liability on an individual who may knowingly submit a false record in order to obtain payment from the government. An example of this may include a government contractor who submits records that he/she knows (or should know) are false and that indicate compliance with certain contractual or regulatory requirements. The third area of liability includes those instances in which someone may obtain money from the federal government to which he/she 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 which obtains interim payments from Medicare or Medicaid 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 or Medicaid program.

The statute of limitations for a false claim report is 10 years. It may be filed by any current or former employee, intern, volunteer, independent contractor or agent of Birch. All claims and reports will be investigated by the Compliance Officer or designee.

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

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

### **Administrative Remedies for False Claims (31 USC Chapter 38. §§ 3801- 3812)**

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

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

## **B. CIVIL AND ADMINISTRATIVE LAWS**

### **1) New York False Claims Act (State Finance Law §§187194)**

The New York False Claims Act is similar to the Federal False Claims Act. It imposes penalties and fines upon individuals and entities who knowingly file false or fraudulent claims for payment

from any state or local government, including health care programs such as Medicaid. It also has a provision regarding reverse false claims similar to the federal FCA such that a person or entity will be liable in those instances in which the person obtains money from a state or local government to which he may not be entitled, and then uses false statements or records in order to retain the money.

The penalty for filing a false claim is a minimum of six to twelve thousand dollars (\$6,000 - \$12,000) per claim plus three times the amount of the damages which the state or local government sustains because of the act of that person. In addition, a person who violates this act is liable for costs, including attorneys' fees, of a civil action brought to recover any such penalty.

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

## **2) Social Services Law, Section 145b False Statements**

It is a violation to knowingly obtain or attempt to obtain payment for items or services furnished under any Social Services program, including Medicaid, by use of a false statement, deliberate concealment or other fraudulent scheme or device. The state or the local Social Services district may recover three times the amount incorrectly paid. In addition, the Department of Health may impose a civil penalty of up to ten thousand dollars per violation. If repeat violations occur within five years, a penalty of up to a minimum of thirty thousand dollars (\$30,000) per violation may be imposed if the repeat violations involve more serious violations of Medicaid rules, billing for services not rendered, or providing excessive services.

## **3) Social Services Law, Section 145c Sanctions**

If any person applies for or receives public assistance, including Medicaid, by intentionally making a false or misleading statement, or intending to do so, the needs of the individual or that of his family shall not be taken into account for the purpose of determining his or her needs or that of his family for six months if a first offense, for twelve months if a second offense (or if benefits wrongfully received are at least one thousand dollars [\$1,000] but not more than three thousand nine hundred dollars [\$3,900]), for seventeen months if a third offense (or if benefits wrongfully received are in excess of three thousand nine hundred dollars [\$3,900]), and five years for any subsequent occasion of any such offense.

## **VII. AVOIDANCE OF CONFLICTS OF INTEREST**

### **A. PURPOSE**

The interests of Birch Family Services and the children, adults, and families we support are superior to the personal interests of any employee, officer, director, intern, volunteer, independent contractor or agent of Birch Family Services and those interests must be protected when the personal interests of an individual are, or may potentially be involved in any activity, transaction or arrangement undertaken by Birch Family Services. Accordingly, all employees, officers, directors, interns, volunteers, independent contractors and agents of Birch Family Services shall avoid even the appearance of any conflict of interest, whether or not such a conflict in fact exists. A conflict of interest exists when there is any motivation or incentive for an employee, officer, director, intern, volunteer, independent contractor or agent of Birch Family Services to act in a manner inconsistent with the best interests of Birch Family Services.

### **B. PROCEDURES**

#### **1. Duty to Disclose**

In relation to the appearance of any conflict of interest, whether or not such a conflict in fact exists, an employee, officer, director, intern, volunteer, independent contractor or agent must disclose the existence of the interest, financial or otherwise, on forms established and be given the opportunity to disclose all material facts to the Compliance Officer and such other individuals or committees as set forth in Birch Family Services' by-laws or operating authority. Based on the facts in the matter disclosed, the Compliance Officer and/or other designated individual or committee shall determine whether a conflict of interest exists.

#### **2. Addressing a Conflict**

In its review of the material facts, the Compliance Officer and/or other designated individual or committee may conduct, or have conducted, an investigation of alternatives to the transaction, activity or arrangement under review. Upon due diligence, such officer, individual or committee shall ascertain whether a more advantageous activity, transaction or arrangement exists that would avoid a conflict of interests and proceed accordingly.

#### **3. Violations**

Any violation of the conflict of interest policy shall be subject to disciplinary and corrective action(s), or termination of a contract/agreement.

Provisions in the Standard / Code of Conduct directing the avoidance of conflict of interest shall supplement any law, rule, regulation, guidance or directive from the State Department of Health or any other regulatory agency including the State Education Department, its "Statement on the Governance Role of a Trustee or Board Member" or similar document, and the Office of the Attorney General and its publications governing the "Internal Controls and Financial Accountability for Not-for-Profit Boards", and "Right from the Start - Responsibilities of Directors and Officers of Not-for-Profit corporations" or similar documents, or any provision of any federal, state, or local contract, through which Birch Family Services provides services, relating to conflicts of interest. Directors and Officers of the Agency shall receive copies of such documents and training thereon from the Compliance Officer.

## **VIII. QUALITY**

Birch Family Services strives to provide services of the highest quality to those we support. All employees, officers, directors, interns, volunteers, independent contractors and agents of Birch Family Services are expected to provide the highest levels of quality of service and will undertake all necessary effort in the successful implementation of every child's, adult's, and family member's service plan, using "best practice" methods and research-based interventions in delivering services and supports.

Each individual associated with Birch Family Services will maintain the highest level of professionalism, demonstrated by their consistent displays of both courtesy and respect when engaged in the business of Birch Family Services. All employees, officers, directors , interns, volunteers, independent contractors and agents will exercise prudent degrees of care, diligence and skill as appropriate to their responsibilities and shall use good judgment in the performance of all activities associated with and on the behalf of Birch Family Services.

Given the proven linkages of knowledge, skill, and quality, Birch Family Services encourages and invests in the on-going professional growth of everyone associated with the agency. The culture of Birch Family Services encourages continuous professional and programmatic improvement and provides resources to encourage and promote the highest standard of practice and care.

The Chief Executive Officer, Program and Administrative Department Directors, Principals, Coordinators, Managers and Professional Supervisors oversee all aspects of service provision and documentation. Collectively, this management team is responsible for ensuring that all services are administered as required by the service plans for each child, adult, and family member and in a manner consistent with the highest quality of care. The Compliance Officer also participates in activities and reviews that are geared to positively impact the qualitative nature of Birch Family Services' operations and services.

Birch Family Services views safeguarding the health and safety of the children, adults, and families we support, and that of all of our staff, as integral to quality service provision. The agency has put in place a wide range of policies and procedures to support the health and safety requirements of the various federal, state, and local agencies that fund and/or purchase services from us. The agency assumes responsibility for the periodic review and revision of such policies and procedures, as well as the associated staff training and retraining, so that these policies and procedures can be fully implemented. These policies and procedures are program-specific and include, but are not limited to:

- infection control;
- supervision of individuals we support;
- incident reporting and management
- preventing and, as necessary, responding to accidents, elopements, injuries, illnesses
- periodic physical examinations and immunizations for personnel, students, and other individuals we support;
- medication storage and administration;
- fire prevention;
- evacuation procedures;
- Cybersecurity
- Privacy Rule , disclosures and Breach Incidents

- Mandated Reporting
- Whistleblower protections
- background screenings and safety assessments
- staff credentialing

As required in certain programs operated by Birch Family Services, the agency has developed and abides by detailed health and safety plans and emergency preparedness plans in community services and education departments, which delineate the actions to be taken in the event of a wide range of potentially disruptive or threatening events.

Birch ensures that there are policies that adequately address the seven elements of an effective compliance plan. These elements are:

Element #1 – Written Policies and procedures that address all elements, that describe compliance expectations as embodied in a Standard / Code of conduct including those to address all elements, a policy of non-intimidation & non-retaliation (Whistleblower Protections), Conflicts of Interest, confidentiality and security of PHI and PII of persons supported.

Element #2 – Designate a Compliance Officer (CO) who is vested with responsibility for day-to-day Plan operation and establish & maintain a Corporate Compliance Committee, chaired by the CO with representation from all parts of the organization.

Element #3 - Compliance Program training and education of employees and other affected individuals including interns, volunteers, independent contractors.

Element # 4- Lines of communication to CO.

Element #5- Disciplinary standards & policies to encourage good faith Plan participation.

Element #6 – Auditing & Monitoring- A system for routine identification of compliance risk areas

Element #7 – A system for responding to compliance issues, as they arise.

There are policies and systems in place to address the seven elements and evaluated for effectiveness on an ongoing basis. Staff receive training on implementation, and a Compliance Officer is in place who monitors the day to day operations of the Plan.

Birch Family Services has established and maintains a number of quality assurance practices in its continuing efforts to provide the highest quality care and interventions for the people we support. These include, but are not limited to:

- Routine professional supervision;
- Announced and unannounced field visits and monitoring;
- Periodic staff training;
- Attendance at professional conferences and trainings
- Staff observations process
- Mentoring for new professionals;

## **IX. NON-RETALIATION / NON-INTIMIDATION**

The good faith participation of employees, directors, officers, interns, volunteers, independent contractors and agents of Birch Family Services is assured and protected by the development and effective implementation of policies of non-intimidation and non-retaliation. Accordingly, no employee, officer, director, intern, volunteers, independent contractors or agent of Birch Family Services shall intimidate or retaliate in any way against any individual acting in accordance with the Plan. Birch fosters a safe environment so that all should feel comfortable reporting such an issue to the Compliance Officer or member of Birch Leadership.

### **A. Prohibitions against retaliation & intimidation**

More specifically, and consistent with the provisions of sections 740 and 741 of New York State Labor Law, no employee, director, officer or agent of Birch Family Services may take any intimidation or retaliation action against an employee, director, officer or agent because such individual:

- Discloses, plans or threatens to disclose to a supervisor or a public body, an activity, action or practice of anyone at Birch Family Services, that is in violation of law, rule or regulation, Birch policies, Birch Standard / Code of Conduct or Compliance Plan and/or such violation creates and presents a substantial and specific danger to the public health or safety, which constitutes health care fraud, or which otherwise constitutes improper quality of care;
- provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into such violation of a law, rule or regulation or
- objects to or refuses to participate in any such activity, policy or practice which is a violation of a law, rule or regulation, Birch policies, Birch Standard / Code of Conduct or Compliance Plan or otherwise reasonably believed to constitute improper quality of care.

### **B. Application**

The protection provided herein shall apply to an employee, director, officer, interns, volunteers, independent contractors or agent who makes such disclosures to a Birch CO or other Birch Leadership, and/or a public body. When the violation is reasonably believed to constitute improper quality of care, or represents a danger to the health and safety of others, the issue must be brought to the attention of a supervisor of Birch Family Services or the Compliance Officer and may also report to any public body.

This exemption from protection shall not apply to an action or failure to act where the improper quality of care presents an imminent threat to public health or safety or to the health of a specific child or adult supported by Birch.

### **C. Relief**

An employee, officer, director, intern, volunteer, independent contractor or agent of Birch Family Services who has been the subject of a retaliatory personnel action may initiate such legal actions and proceedings and request such relief to the extent provided in sections 740 and

741 of the New York State Labor Law.

#### **D. Procedures**

An employee, officer, director, intern, volunteer, independent contractor or agent of Birch Family Services who believes he/she has been the subject of intimidation or retaliatory action shall report such alleged or suspected intimidation and/or retaliation to the Compliance Officer. The Compliance Officer and / or the Human Resources Department shall investigate and address such allegation promptly, thoroughly and objectively and may receive assistance from any internal or external resource as the Compliance Officer deems necessary or appropriate.

All documents and relevant materials shall be confidential and shall not be kept in the personnel files of such individual. The Compliance Officer shall report frequency and types of alleged intimidation and retaliation as appropriate.

## **X. COMPLIANCE OFFICER**

While responsibility for compliance rests with each employee, officer, director, intern, volunteer, independent contractor and agent of Birch Family Services, managerial oversight for compliance rests with the Compliance Officer (CO), Corporate Compliance Committee and the Audit Committee with the ultimate authority residing with the Board of Directors.

An effective Compliance Officer is key to assuring the successful implementation of the Compliance Plan (Plan). Such individual promotes a culture of integrity and informs decision making around service quality and excellence, supported by the resources of the entire organization.

Birch Family Services' Compliance Officer (CO) shall be an employee, appointed by the Birch CEO and Board of Directors, who is a key member of the senior leadership team and is responsible for the day-to-day operation of the Plan. The CO shall possess the experience, training and integrity necessary to fulfill the responsibilities of the position. Such training and experience shall be in areas such as compliance and operations, including the business process of compliance and shall reflect an understanding of the laws, regulations and standards applicable to programs and services provided by Birch Family Services.

The CO may have other duties or responsibilities within the agency. However, the CO shall be advised that if such other duties or responsibilities create any conflict with his/her ability to function as CO, whether due to a conflict of interest or as a result of time limitations, the CO shall simultaneously report same to both Birch Family Services' Chief Executive Officer (CEO) and the Chair of Birch Family Services' Board of Directors (Board). The CO shall have direct access to both the CEO and the Board.

The CO's duties shall include, but not be limited to:

1. providing appropriate guidance to departments within the organization and to management relating to the meeting of statutory and regulatory obligations
2. periodically attending education conferences, meetings or seminars designed to enhance his/her understanding of the effective development and implementation of the Plan and identification and management of risk areas
3. promoting compliance of and adherence to Birch Family Services' Standard / Code of Conduct and Business Ethics and all applicable rules, regulations and laws
4. facilitating communication and activities throughout the organization on compliance related issues
5. monitoring federal and state agency websites (e.g., OIG and OMIG) for guidance, reports, and other publications indicating potential areas of weakness in compliance
6. accessing resources within and outside of Birch Family Services to effectively design, implement and monitor the Plan which shall include information about Birch Family Services' organization and operations to best assess compliance and to identify weak areas. Accordingly, the CO shall have access to all relevant documents, systems and records necessary to fulfill his/her obligations and duties
7. securing support from the CEO and Board of Directors for compliance initiatives including incentivizing the reporting of compliance concerns and assuring no retaliation for such reporting activities
8. revising the Plan, including the Standard / Code of Conduct, as deemed necessary and appropriate and to reflect changes to applicable laws and regulations
9. accessing outside counsel and consultants where necessary and appropriate

10. developing and ensuring the effective implementation of a confidential and anonymous system through which employees, officers, directors and agents of Birch Family Services may express compliance concerns, and have those concerns appropriately addressed
11. identifying patterns or issues related to compliance
12. investigating expressed concerns of compliance;
13. compiling, maintaining, and publicizing the availability of, a library of resources for staff, board members, partners and families to supplement-and to facilitate the greater understanding and full implementation of the Plan. Such resources shall include, but not be limited to: professional association Standard / Codes of conduct; state practice guidelines; guidelines and training materials from state offices and agencies for Officers and Directors; required postings for families; and laws, rules, and regulations referenced and/or summarized in and/or supplemental to the Plan;
14. ensuring that agency policies and procedures needed to maintain compliance with all laws, rules, regulations, contracts applicable to the agency are developed, maintained, and disseminated so as to the promote understanding of, compliance with, and enforcement of such policies and procedures. and
15. substantiating the fulfillment of his/her duties and responsibilities through appropriate documentation.

The CO shall report regularly on compliance matters to Birch Family Services' CEO. The CO shall also appear at all regularly scheduled meetings (and, as determined by the Board, special meetings) of the Audit Committee and the Board of Directors at which time he/she shall present a report of compliance activities undertaken on behalf of Birch Family Services' to the Board. The CO also must periodically attest to the Board as to the adequacy of the available human and material resources to maintain internal controls, monitor risk and revise and implement the compliance work plan, and respond to emerging issues and requirements.

### **Corporate Compliance Committee**

The Corporate Compliance Committee shares oversight responsibilities with the CO and provides support to the Plan. The Corporate Compliance Committee shall include senior management individuals from all departments and shall meet at least bi-monthly with the CO to share with the CO their individual assessments in their areas of expertise and to assist in identifying risk areas. Risks are prioritized and risk management activities and plan are designed. The CO in concert with members of the committee use this information as well as information gathered from a variety of other resources such as internal and external reviews, results of investigations, etc. to build the annual compliance work plan. This committee monitors status and progress and makes recommendations for compliance.

### **Audit Committee**

The Audit Committee members consist entirely of independent directors of the Board of Directors, to provide oversight for the audit of the Agency's financial statements, conflicts of interest, agency internal controls, risk management, compliance plans and compliance activities. The CO and CFO provide related information.

The CO in concert with members of the committee use this information as well as information gathered from a variety of other resources such as internal and external reviews, results of investigations, etc. to build the annual compliance work plan. This committee monitors status and progress of the work plan and makes recommendations for compliance.

## **XI. TRAINING AND EDUCATION**

### **Overview**

The effectiveness of the Compliance Plan is further enhanced by the provision of training to all employees and affected individuals to assure accurate, reliable and consistent information that will lead to continual quality improvement and compliance.

1. All employees, officers, directors, from all departments and agents of Birch Family Services shall receive training on Birch Family Services' policies and procedures and specifically, the Compliance Plan and the Standard / Code of Conduct as well as the expectations of Birch Family Services' management with respect to compliance with the Plan, at the time of hire or at such other time as such individual commences activities on behalf of or for the benefit of Birch Family Services.
2. All employees, officers, directors, interns, volunteers, independent contractors and agents of Birch Family Services shall also receive training at least annually on (i) the Compliance Plan, including its operation as well as the expectations of Birch Family Services' management with respect to compliance with the Plan and Standard / Code of Conduct and (ii) such other compliance issues as the CO deems timely and appropriate at the time of the training.
3. Training provided in furtherance of the Plan shall be provided by qualified individuals and shall contain the following components:
  - a. training shall be mandatory and carry sanctions for failure to attend or participate
  - b. training materials shall be annually evaluated by CO, consider relevant audits and investigations, include a variety of teaching methods and be developed at appropriate reading levels
  - c. training information shall be disseminated through a variety of means, including, but not limited to, newsletters, notices, posters, FAQs and intranet sites and may occur at regular staff meetings
  - d. training and education shall be tied to changes in applicable laws, regulations and policies
  - e. training shall address identified or potential weaknesses in current operations, including the development and implementation of corrective action plans when necessary
  - f. training shall explain the importance of complying with applicable laws, rules and regulations and convey Birch Family Services' commitment to compliance and high standards of integrity
  - g. training shall include legal requirements relating to the False Claims Act and related laws
  - h. training shall include requirements of mandated reporters
  - i. training shall include requirements for confidentiality, the Privacy Rule and breach of personal data
  - j. training shall include review of disciplinary policies which encourage good faith participation in the Plan; and
  - k. employees, directors, officers and agents who receive training shall be informed of when and how to obtain additional assistance

All training shall be documented either with by sign-in sheets and/or written or electronic

attestations, reflected in the minutes from meetings as applicable, and/or tracked electronically via our Electronic Learning Management System. All employees shall sign a statement of acknowledgement of receipt of the Compliance Plan.

## **XII. COMPLIANCE REPORTING MECHANISMS**

### **Overview**

Having an “open-door environment” and open lines of communication are the cornerstone of an effective compliance plan. A culture that encourages questioning and assures meaningful responses is necessary. Birch creates a safe environment where the CO and other members of Birch Leadership are approachable and accessible to all, and one in which everyone should feel comfortable raising concerns.

### **Communication Lines to the Compliance Officer**

1. The Compliance Officer shall be accessible to all employees, directors, interns, volunteers, independent contractors and agents of Birch Family Services and the lines of communication to him/her will be open and inviting. Communication directed to the Compliance Officer may be by telephone call /voice message, email, text, internal hotline, external hotlines or meeting with the Compliance Officer in person. Reporting of compliance concerns shall be encouraged through the conspicuous posting of such officer's contact information in high traffic areas, on the Birch website and in newsletters or other mechanisms of communication, and through presence in new staff orientation and inclusion in training material and compliance training information. Birch creates and fosters a safe environment for reporting and communicating with the Compliance Officer and all Birch Leadership staff including a culture of non-retaliation and non-intimidation.
2. All employees, officers, directors , interns, volunteers, independent contractors and agents of Birch Family Services shall immediately report any suspected or known violations or violation of law, regulation or the Plan. Such report should typically be made to such individual's direct supervisor, who shall then convey the report to the CO. If such supervisor receives such report orally, he or she shall make the report to the CO and shall identify the individual originally having made the report, unless such individual has requested anonymity. Anonymous reports will be received and acted on in a manner that protects anonymity while allowing a meaningful assessment of the concern, whether through an independent reporting path, or some similar means. When making an anonymous report, it is encouraged that the reporter provide sufficient information Such as date, time, involved individuals, etc. so that a thorough and effective investigation can be conducted. Anonymous reporters are also encouraged to leave some sort of contact information so that the issue reported can be discussed while still protecting the anonymity of the reporter.
3. If, under the circumstances, an employee, officer, director, intern, volunteer, independent contractor or agent wishes not to or cannot practically make such report to his or her direct supervisor, such individual may:
  - a. make such report directly to the CO; or
  - b. make such report via voicemail left on Birch Family Services' anonymous toll-free compliance hotline. The CO shall monitor all such reports and respond as set forth in the Plan.
4. The CO shall document in writing any report received pursuant to the Plan. The CO shall keep a record of all reported concerns and/or suspicions of violations, anonymous or attributed.

5. Employees, officers, directors . interns, volunteers, independent contractors or agents of Birch Family Services who have questions or concerns relating to potential non-compliance by the Compliance Officer should report them immediately to the Chief Executive Officer.

### **XIII. RESPONSE TO COMPLIANCE CONCERNS**

#### **Overview**

A well-articulated process of response to compliance issues is essential to assuring compliance with the applicable policies, laws and rules and regulations, whether such issues are raised by individuals or identified in the course of self-evaluations and audits. Accordingly, Birch Family Services has developed the following, policies and procedures to assure that compliance concerns are corrected promptly and thoroughly and that policies and procedures are adjusted and modified to prevent any re-occurrence.

1. Upon receiving a complaint from a whistleblower or report from any source as to suspected or actual violation of law, regulation, Birch Standard / Code of Conduct, Birch policy or the Plan, the CO shall conduct such investigation as he/she shall deem necessary in order to determine whether the report is accurate or not. The CO may involve the CEO in designing such investigation and/or securing the resources necessary to conduct such investigation, if deemed appropriate by the CO. In the event involvement of the CEO would create or exacerbate any potential or actual conflict of interest in judgment of the CO, the CO may instead seek the involvement of the Chair of the Board of Directors.
2. All relevant parties including the subject of a whistleblower complaint will be interviewed and will be required to provide a written statement. Any person who is the subject of a whistleblower complaint or any other report, shall not be present at or participate in deliberations including Board or committee deliberations or vote on the matter relating to such complaint, provided that nothing in this paragraph shall prohibit the Board or Audit Committee from requesting that the person who is subject to the complaint present information as background or answer questions at a committee or Board meeting prior to the commencement of deliberations or voting relating to the complaint.
3. The CO and the CEO (unless the CEO is a subject of the investigation), shall promptly report to and advise the Board about any matter that, if founded, may require disclosure to any government agency.
4. The confidentiality and anonymity of any individual filing a report pursuant to the plan shall be safeguarded to the maximum degree reasonably feasible subject to the obligations imposed by the Plan.
5. At the conclusion of such investigation, the CO shall render a determination in writing as to whether such reported violation has been substantiated or not. Such report shall also include the following information from the CO:
  - a. A statement of any steps required to remediate any consequences of any substantiated violation; and
  - b. A recommendation as to any modifications to Birch Family Services' policies and/or procedures that should be made to prevent the recurrence of any substantiated violation.
6. The CO shall present such written determination to the CEO (or to the Chair of the Board if the CEO is a subject of the written determination).

7. The CO and the CEO (or Chair of the Board if the CEO is a subject of the investigation) shall determine whether any further disclosures are warranted, including, but not limited to, disclosures to government agencies.

#### **XIV. POLICIES THAT ENCOURAGE PARTICIPATION**

Employees, interns, volunteers, independent contractors, agents and affected individuals' meaningful participation in the Plan shall be encouraged through well-articulated incentives which shall include, but not be limited, to the inclusion of compliance responsibilities in performance plans and evaluations and the inclusion of compliance goals in department head performance plans relevant to such individual's specific function.

## **XV. DISCIPLINARY POLICIES**

### **Overview**

Meaningful participation in the Plan is also encouraged through clear, fair and consistent disciplinary policies supported by clearly articulated sanctions. Expectations for reporting compliance issues are, therefore, reinforced through succinct disciplinary protocols. At the core, all employees, officers, directors, interns, volunteers, independent contractors and agents have an underlying obligation to participate in good faith in investigations of compliance concerns, to be truthful with investigators and to provide support documentation or records relevant to investigations.

1. The following shall be deemed violations of Birch Family Services' policies and shall warrant disciplinary action consistent with such policies:
  - (a) violating any law, regulation or the Plan while conducting the affairs of Birch Family Services
  - (b) encouraging, facilitating, or permitting actively or passively any violation of law, regulation or the Plan by another individual conducting the affairs of Birch Family Services
  - (c) failing to report any suspected violation of law, regulation or the Plan by anyone conducting the affairs of Birch Family Services
  - (d) failing to cooperate in any investigation undertaken by the CO in accordance with the Plan
  - (e) encouraging, directing, facilitating or permitting non-compliant behavior; and
  - (f) intimidating and/or retaliating in any way against any individual making a report, cooperating with any investigation, or otherwise acting in accordance with the Plan.
2. Without in any way limiting the foregoing, no individual filing a good faith report pursuant to the Plan shall be subject to any form of discipline or adverse action by reason of filing a report of a concern or suspected violation, regardless of the outcome of the CO's investigation of any such report.
3. Sanctions imposed under the disciplinary policies shall be consistently applied.

## **XVI. COMPLIANCE RISK AREAS**

As of the date on which the Plan was prepared, revised or updated, the following compliance risk areas have been identified as areas where the CO should perform affirmative monitoring from time-to-time, including, but not limited to, internal or external auditing and evaluation of potential or actual non-compliance as a result of such self-evaluations as the CO deems appropriate:

- billing / claims
- cyber security
- payments
- quality of care
- service delivery /documentation
- time & attendance records
- systems implementation
- mandatory reporting
- credentialing; and
- such other risk areas that are or should be identified with due diligence, as such risk areas related to Birch Family Services' systems and operations.

### **Routine Identification of Risk Areas**

The CO shall, in consultation with department heads, program supervisors and other such individuals as he/she deems appropriate, and upon review of applicable guidance materials and other industry standards, routinely identify such compliance risk areas that shall be assessed based upon review of applicable state work plans and audits, internal and external reviews, benchmarks and trends and general industry guidance. More specifically, the CO shall conduct, or arrange to have conducted under his/her direction, internal audits with sufficient frequency and thoroughness to effectively identify non-compliance according to an compliance work plan that includes an internal audit plan that is:

- developed at least annually, and revised as necessary
- assesses compliance data from the previous year (audits, statistics, etc.), to identify high risk areas for the coming year (trend tracking)
- identifies corrective action plans and required auditing methods and schedules to confirm compliance; and
- includes measurements, timetables and individuals responsible for addressing each risk area.

Such audit findings shall be analyzed to identify non-compliance through comparison with publicly available statistics and prior audits and identification of trends and other appropriate metrics identified in advance of the audit. Audit results will be shared with the CEO, the Audit Committee, the Compliance Committee and the Board of Directors.

### **Provisions Specific to Billing**

In furtherance of Birch Family Services' Standard / Code of Conduct and Business Ethics (Standard / Code) which demands integrity in all business operations, great attention must be given protocols governing billing and claims for reimbursement as areas of greatest risk for non-compliance.

Accordingly, the following components are integrated into the Standard / Code of Conduct to which each employee, officer, director and agent is bound and shall be the focus of the CO's compliance review:

- Employees, directors, officers or agents who perform billing responsibilities must take reasonable precautions to confirm that their work is accurate, timely and complies with all applicable laws, rules and regulations
- No employee, director, officer, independent contractors or agent shall submit any claims for payment or reimbursement that is false, fraudulent, inaccurate or fictitious; and,
- Only services that have been properly approved for and delivered to a child, adult, or family member, in accordance with all applicable laws, rules and regulations, shall be billed.

Any employee, director, officer, intern, volunteer, independent contractor or agent who has compliance concerns around any billing component or procedure shall report such concerns to the supervisor and/or CO.

Birch Family Services has developed a system of procedures to prevent and detect fraud and abuse designed to resolve payment discrepancies and to detect inaccurate billings, among other things, as quickly and efficiently as possible and to impose systemic checks and balances to prevent future reoccurrences.

### **Provisions Specific to Credentials**

Because ensuring that staff are appropriately qualified to provide services to the children, adults, and families we support is critical to compliance and quality service provision, Birch Family Services shall routinely confirm and verify the appropriate credentialing and/or licensure of all employees and agents consistent with applicable laws, rules and regulations, and with or federal, state and local grants and contracts. Given the import of this matter, the Compliance Officer has a clear role to review and monitor credentialing.

### **Zero Tolerance:**

Due to the critical nature of the information and materials that are required to obtain and maintain a position with this agency, Birch Family Services has a zero tolerance policy in regard to the falsification, misrepresentation, or lapse of staff certifications, licenses, medical forms, or similar information.

The CO in concert with Human Resources will provide oversight of the array of actions that are already undertaken by Birch Family Services to ensure the potential employees, agents or directors of Birch Family Services are appropriately credentialed, certified and/or licensed, have current medical forms (where required), and are legally employable. These include, but are not limited to:

- the requirement that applicants submit original NYS license(s), registration(s), certification(s), and medical clearances for review and duplication as well as any professional certifications (e.g., Certificate of Clinical Competence issued by the American Speech-Language-Hearing Association); verification by Birch Family

Services personnel of all such documents on available web sites or other appropriate means as being current and clear of suspension or revocation;

- initialing of copies of original documents by the HR Director or designee for inclusion in the employee's personnel file;
- before any employee (or any other staff member, officer, director, intern, volunteer, independent contractor, or vendor of the agency begins work or service, his/her identifying information will be checked against various publicly available databases and exclusion lists to determine if they are restricted, terminated or excluded from participation in the Medicaid Program and/or other government programs. These databases include, but are not limited to:
  - Office of the Medicaid Inspector General's (OMIG), List of Restricted and Excluded Providers
  - Office of the Inspector General- US Department of Health and Human Services, List of Excluded Individuals/Entities and List of Most Wanted Fugitives
  - Federal System for Award Management (SAM), List of Parties Excluded from Federal Procurement and Non-Procurement Programs
  - Office of Foreign Assets Control US Department of the Treasury, List of Specially Designated Nationals
- Birch Family Services uses a subscription service that checks names / persons submitted by the agency against the above databases and exclusion lists and issues reports of the results, which are analyzed and followed up by Human Resources. The results are reported by Human Resources to the CO for review on a monthly basis. Copies of reports relating to specific individuals/entities appearing on the lists, along with the written determination of Human Resources and the actions taken by Birch Family Services in regard to such individuals/entities, will be filed and maintained in the employee's file or with the entity's contract or service agreement;
- On a 30 day basis thereafter, Birch Family Services' staff will check the complete list of Birch Family Services' active personnel (and all other officers, directors, and other agents/vendors of the agency) against the above databases and exclusion lists to determine if any such individuals or entities were added to the restricted, terminated or excluded list during the prior thirty (30) days;
- implementation of a tracking system and associated procedures to ensure on-going collection of time-sensitive documents such as certifications, state-issued registrations for licensed professionals, medical forms, documentation of status of professional development requirements, and professional disciplinary actions/sanctions. Birch Family Services accesses various publicly available websites to initially, and periodically thereafter, verify and document the compliance of its employees with such credentials and professional requirements, including, but not limited to:
  - New York State Education Department, Office of Teaching Initiatives, Teacher Education Assistance for College and Higher Education (TEACH System),

- New York State Education Department, Office of the Professions
  - each record obtained from the above websites will be printed and filed in the employee's file to document these credential checks;
  - pre-employment clearance through the NYS Central Registry of Child Abuse and Maltreatment for all staff of Birch Family Services, and subsequent periodic clearance through the Registry as required by laws, rules, regulations, grants, or contracts applicable to particular programs and services;
  - pre-employment clearance through the NYS Justice Center for the Protection of People with Developmental Disabilities Staff Exclusion List, as required by laws, rules, regulations, grants or contracts applicable to particular programs and services;
  - criminal background check and clearance through fingerprinting with the NYC Department of Investigation and/or the NYC Department of Education and/or OPWDD and the Justice Center for the Protection of People with Developmental Disabilities, based on the particular programs and services to which a staff member or other agent may be assigned;
  - submission of written letters of reference by applicants as required by laws, rules, regulations, grants or contracts applicable to each program and service, which are then verified by Birch Family Services staff; and
  - completion of the federal I-9 form and review of supporting documentation of the employee's eligibility for lawful employment in the United States.
  - Completion of any other screening or background checks as required by law or regulation.

## **XVII. LIST OF RESOURCES**

1. Birch Family Services Standard / Code of Conduct
2. Birch Family Conflict of Interest Policy & Self-Disclosure Statement
3. Federal False Claims Act (31 USC §§3729-3733)
4. Civil and Administrative Laws
  - a. New York False Claims Act (State Finance Law §§187194)
  - b. Social Services Law, Section 145b False Statements
  - c. Social Services Law, Section 145c Sanctions
  - d. Social Services Laws here – Title 18 NYCRR Part 521
5. Criminal Laws
  - a. Social Services Law, Section 145 Penalties
  - b. Social Services Law, Section 366b Penalties for Fraudulent Practices.
  - c. Social Services Law, Section 145c Sanctions
  - d. Penal Law Article 175 False Written Statements
  - e. Penal Law Article 176 Insurance Fraud
  - f. Penal Law Article 177 Health Care Fraud
6. Whistleblower Protection
  - a. Federal False Claims Act (31 U.S.C. §3730(h))
  - b. New York State False Claim Act (State Finance Law §191)
  - c. New York State Labor Law, Section 740
  - d. New York State Labor Law, Section 741

## **XVIII. RELATED BIRCH FAMILY SERVICES POLICIES & PROCEDURES**

1. Conflict of Interest
2. Progressive Discipline
3. Whistleblower Protections
4. Staff Health Forms
5. Staff Credentialing
6. Training Implementation Plan
7. Background Check
8. Safety Assessments
9. Confidentiality
10. Request and Disclosure of Documents
11. Record Retention and Destruction