



A Quarterly  
Newsletter  
of the  
Council of  
Community  
Services of  
New York  
State, Inc.

# FOCUS

## **Standards for Common Sense: A Practical Guide to Basic Accountability Standards for New York Nonprofits**

**Published by CCSNYS with support from The Dyson Foundation**

**Accountability. Governance. Standards.** Over the past decade, these three watchwords have become a mantra for nonprofits as they struggle to overcome a broad-based erosion of public confidence in the charitable sector. This loss of trust began in 1992 with a scandal at United Way of America involving the crimes of President William J. Aramony and negligence by its governing board. An ongoing series of isolated, yet equally sensational,

scandals among smaller nonprofits and private foundations have continued to fuel public skepticism and arouse the interest of state and federal officials. In response, charities have sought to strengthen their own governance and internal controls. They also have searched for ways to reassure wary donors of their effectiveness, their efficiency and, most important of all, their integrity. A key component of this effort has been the development and promulgation of “standards” – standards for governance, excel-

lence, management, financial accountability, public disclosure, program effectiveness, etc. The number of organizations which have developed and promulgated standards for nonprofit accountability has grown dramatically in recent years. Independent Sector, a national organization promoting the nonprofit sector, has identified and compiled almost one hundred different sets of standards which have been developed by charity watchdog groups, nonprofit and foundation associations, professional associations, as well as individual organizations themselves. In some cases, these standards cover broad issues of organizational governance and accountability for the nonprofit sector as a whole. In others, they focus on management and programmatic activities of specific sub-sectors, such as museums, foundations, fundraising groups or healthcare organizations. (Independent Sector’s



on-line collection of these various standards is located at the “Accountability” section of [www.independentsector.org](http://www.independentsector.org).) How do these standards work? Who develops them and why? Which standards apply to or could assist your nonprofit? It all depends. First, it is important to understand that standards of accountability fall into several different categories.

*“The number of organizations which have developed and promulgated standards for nonprofit accountability has grown dramatically in recent years. How do these standards work? Who develops them and why? Which standards apply to or could assist your nonprofit? It all depends.*

### **In This Issue...**

<b>News you can Use</b>	6
Add Your Voice to the Nonprofit Congress! Declaration for America’s Nonprofits CCSNYS Members Rewarded for Hard Work...	
<b>Education and Events</b>	9
Learning & Leading: The CCSNYS Executive Director Retreat 5th Annual Camp Finance Board and Staff Workshop Series for Spring 2006!	
<b>Looking to the Future</b>	17
Review: The Special Events Toolbox Funding Your Vision All Depends on How you Say it...	
<b>Staying the Course</b>	21
Finger on the Pulse: An Update on the Current Fundraising Climate Five Things That Should Never Appear in an Employee Handbook Attorney General Calls for Sweeping Medicaid Fraud Laws	
<b>Membership and Benefits</b>	26
Welcome New CCSNYS Members Membership Spotlight: Baby Buggy, Inc.	

*continued on page 3*



## Is Your Board Bifurcated? Huh?

There are all kinds of regulatory and “best” practices being tossed around nowadays as to how nonprofits can be more accountable and better governed. The one practice where there appears to be total consensus is to have a well-meaning, talented and appropriately balanced board composition whose members are committed to mission and able to function as responsible fiduciaries. Clearly, this solution is easier said than done.

This brings us to one of the latest “new” ideas; to have what is considered a “bifurcated board.” If your jaw dropped when you read that and your brain went “What?!” I fully understand; but new governance trends, even re-packaged, re-named ones such as this, have a place in the marketplace of governance solutions.

The concept of a bifurcated board, as advocated by Michael Klausner and my respected colleague Jon Small in the *Stanford Social Innovative Review*, is that the board divides into two parts; there are those real board members who assume and exercise full governance responsibility and those not-so-real members who do ancillary things of value but without fiduciary obligations. The model is seen as a solution to the dysfunction that boards experience as a result of having too many members for responsible engagement or having directors with too specialized or narrow of an interest such as fundraising or programs. These members are well-meaning but not “up to the job”, or may serve more so because of “status” than anything else.

The bifurcation label is perhaps new, but not the concept. It is more widely used than we may think and has been since the dawn of nonprofits. Most boards allow non-board members to sit as ex-officio, non-voting members or on committees, advisory or auxiliary groups. Many use, and I would argue mistakenly, their executive committees to govern as “shadow” boards; rendering the remaining full corporate board to be rubber-stampers or spectators to true governance activities. An old bifurcated model (that is sadly still present today) is where a board of “trustees” controls the assets of the corporation while a board of “directors” is attentive to operating or what I call “mission oversight” issues. In some of the century old female focused nonprofits, trustees were men and women were directors.

There are no “nirvanas” in this world of governance nor are there silver bullets that will end the failure of some boards to govern. On one hand, bifurcation is really just a smart way to allocate human capital at the board and oversight level while being attentive to compliance and risk management matters. On another hand, it can be seen as an allocation of power because ultimately, those who vote are in control. One needs to be very careful not to assume that those most competent in compliance or professional governance matters are the ones most competent in decisions of mission importance. The reality is that when push comes to shove and things look most dire, it is more often than not the board members and supporters who are closest to the passion and impact of mission who are the ones sticking it through.

The point here is that good governance is about far more than legal and financial accountability. It is fundamentally about the hard work of advancing mission and doing so with a process that is empowered by experience, diversity, inclusiveness, commitment, continual learning, and smart organizing. We need to be careful that the contemporary call for bifurcated boards is not a call for devaluing the power and influence of those most invested in and loyal to the nonprofit.

Doug Sauer, CEO

Council of Community Services  
of New York State, Inc.

272 BROADWAY  
ALBANY, NY 12204  
(518) 434-9194  
1 (800) 515-5012  
FAX (518) 434-0392  
WWW.CCSNYS.ORG

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## “A Celebration of Community Impact – 25 Years and Counting”

The Council of Community Services of New York State, Inc. (CCSNYS) is celebrating Doug Sauer in his 25th year of leadership as our CEO. “A Celebration of Community Impact – 25 Years and Counting” was held on April 27, 2006 from 5:30 pm to 7:30 p.m. at the Franklin Plaza Ballroom in Troy, NY. Over 175 people, including members, friends, politicians and corporate partners came out to roast Doug Sauer.

Due to Doug’s commitment to a strong and vibrant nonprofit sector as well as the communities they serve, CCSNYS is the only statewide association of nonprofits that blends nonprofit capacity building with community planning.

We would like to thank Doug on 25 years of leadership. Here’s to 25 more!

### THE MANY FACES OF DOUG...



↑  
*Doing what he  
loves most...  
talking!*

*A moment  
of rest...*



*Who says we can't  
hit our boss with  
water balloons?*



↓  
*Do I run  
to 2nd base  
or what?*



↑  
*Doug, the father figure  
to us all.*

**“Congratulations Doug on 25 years of impact!”**

*“News reports of scandals have led public officials...to consider and/or propose significantly stricter laws and regulations governing nonprofits – despite an evident lack of resources to enforce those provisions already on the books.”*

## **Laws & Regulations**

Federal, state and local governments establish laws and/or regulations which govern the formation and activities of nonprofit corporations. These are standards which carry the force of law and failure to comply can bring the imposition of criminal and/or civil penalties. News reports of scandals and abuses of tax-exempt status have led public officials at all levels of government to consider and/or propose significantly stricter laws and regulations governing nonprofits – despite an evident lack of resources to enforce those provisions already on the books. Examples include the

Internal Revenue Service Tax Code covering tax exempt organizations, state Not-for-Profit Corporations Laws, etc.. This year, both the U.S. Senate Finance Committee and the Ways and Means Committee of the House of Representatives have held hearings in anticipation of proposing revisions to IRS regulations regarding tax exempt entities. The Panel on the Nonprofit Sector, convened by Independent Sector, has responded to the Senate Finance Committee by submitting recommendations for legislative action and self-regulation by charities themselves. At the state level, Attorney Generals and legislators have proposed expansions of laws covering governance and public disclosure requirements for nonprofits. In recent years, New York State Attorney General Eliot Spitzer has offered several significant legislative initiatives designed to more heavily regulate nonprofits, especially with respect to matters of board governance and financial oversight.

## **Rating or “Watchdog” Organizations**

Several groups evaluate and rate charities against their own set of standards and make these evaluations available to the public. Nonprofits may choose whether or not to cooperate with the rating agency. Regardless of this decision, the evaluation and/or their lack of cooperation may be reported to the general public. The Council of Better Business Bureau’s (BBB) Wise Giving Alliance is one such “watchdog” organization. In 2003, the BBB Wise Giving Alliance revised its “Standards of Accountability” to better reflect the perceived concerns of donors. The Alliance also began offering the “National Charity Seal Program.” Nonprofits can inform potential donors that they meet the new standards through use of the BBB Wise Giving Alliance seal on their fundraising materials. The Philanthropic Advisory Service of the BBB Serving Metropolitan New York evaluates local nonprofits against the Wise Giving Alliance’s standards and offers a “seal” to those which meet them.

## **Accreditation Standards**

Some associations or other umbrella groups establish standards and criteria for member organizations or others which apply for accreditation. The programs are voluntary and often fee based. Compliance with the standards is externally monitored by the accrediting body. The Standards for Excellence Institute, originally developed by and now a division of the Maryland Association of Nonprofit Organizations, is one such accrediting body which focuses on broad issues of governance and accountability for charities of all types. The Standards for Excellence Institute has expanded into other states and regions, having been adopted by at least six other state/local nonprofit associations – Louisiana, North Carolina, Ohio, Pennsylvania, Georgia and Chicago. Earlier this year, the Standards for Excellence Institute began to offer its accreditation program to nonprofits on a nationwide basis. The Evangelical Council on Financial Accountability (ECFA) is another organization which sets standards and accredits its own faith-based member organizations. In addition, many standards-setting bodies accredit organizations which operate in specific programmatic subsectors. For example, the Joint Commission on the Accreditation of Healthcare Organizations (JCHAO) and the Council on Accreditation (COA) are bodies which set standards and evaluate organizations involved in healthcare and child welfare, respectively. These standards-setting bodies do detailed evaluations of a nonprofit’s management and quality of service. However, they also set standards for and evaluate broader issues of governance and accountability.

**Standards for Common Sense** (cont'd from page 4)

## Best Practice Guidelines

Some standards simply serve as guidelines for self-improvement and self-regulation. Nonprofits adopt the standards voluntarily and there is no external verification of compliance. The Independent Sector's "Statement of Values and Code of Ethics for Nonprofit and Philanthropic Organizations" is one such example of Best Practice Guidelines. It is "intended as a model for use by nonprofit organizations and foundations nationwide." In 1994 the Minnesota Council of Nonprofits became the first state association to develop best practice guidelines for its member organizations with its "Principles and Practices for Nonprofit Excellence." Although CCSNYS has not established a formal set of standards for consideration as sector-wide best practices, CCSNYS does promote certain advisory guidelines for New York State nonprofits to consider.

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## Board Size

Nonprofit corporations vary dramatically in size and purpose, from the smallest neighborhood block associations to national providers of health and welfare services with budgets in the hundreds of millions of dollars. Boards of directors, overwhelmingly made up of volunteers, bear the legal and ethical responsibility for overseeing the activities of these organizations and for protecting their assets, which predominately come from public contributions and/or contracts with federal, state and local governments. How many members does a board need to meet these varied and complex responsibilities? Legal requirements and "best practice standards" differ? New York State's Not-for-Profit Corporation Law ("NPLC") requires that Boards of Directors have a minimum of only three members to form a new not-for-profit corporation and to provide ongoing governance throughout its corporate life. This three member minimum is consistent with the Revised Model Nonprofit Corporation Act, adopted in 1987 by the American Bar Association, which has been adopted in 23 states. A number of other states allow nonprofit corporations to have only one director, while New Hampshire requires a minimum of five. There currently are no federal requirements imposed by IRS regulations as to the size of boards for tax exempt nonprofit corporations. The Independent Sector's Panel on the Nonprofit Sector recently proposed that the IRS change its regulations and require qualifying organizations, with certain exclusions, to have a minimum of three board members.



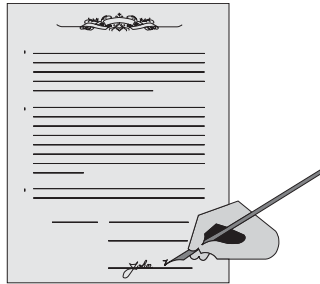
The *Standards for Common Sense* Booklet covers the following areas of board governance in more detail:

- Board Size Laws and Regulations:
- Compensation IRS Code
- Conflict of Interest New York State Law
- Board Member Independence BBB Wise Giving Alliance
- Term Limits Standards for Excellence Institute
- Meeting Requirements Panel on the Nonprofit Sector
- Audits Evangelical Council for
- Audit Committees

For more on Board Size and further in-depth information on standards and best practices for each one of the above areas, please go to [www.ccsnys.org](http://www.ccsnys.org) to download the complete publication.

# Add Your Voice to the Nonprofit Congress!

The Council of Community Services of NYS, Inc. (CCSNYS) is proud to help lead our state in adding its voice to the **National Nonprofit Congress**.



The National Council of Nonprofit Associations (NCNA) has begun a nationwide effort to bring nonprofits together. The Nonprofit Congress is an unprecedented initiative designed to unite American's nonprofit organizations and engage America's nonprofit leaders. In the best spirit of democracy, the Nonprofit Congress is helping nonprofit leaders and allies in communities across the country come together to:

- Forge a common identity based on shared values;
- Develop a unified vision and message; and
- Exercise a collective voice

## WHY A NONPROFIT CONGRESS?

*Every American has been touched at one time or another by the work of a nonprofit. Yet despite the value that nonprofits add to the quality of life in America, the survival of many charitable organizations is uncertain. Due to a convergence of threatening factors – including declining resources, increasing demands to deliver more services, widespread misunderstanding about nonprofits, mounting operational complexities, and fragmentation within the sector – nonprofits find themselves operating in a most challenging environment. The communities we serve and the issues we care about suffer when we are fragmented and isolated. Now more than ever, nonprofits need to unite around our common values, develop a shared vision, and exercise our collective voice for a better future.*

If you have questions about the *Declaration for Nonprofits* or other ways you can get involved, please contact Krista Clark at [kclark@ccsnys.org](mailto:kclark@ccsnys.org). If you have questions about the National Nonprofit Congress please visit [www.ncna.org](http://www.ncna.org).

## SUPPORT THE NONPROFIT CONGRESS

You too can add your name in support of this movement by logging onto [www.ccsnys.org/congress.htm](http://www.ccsnys.org/congress.htm).

While you're there, take a few minutes and help us form a common vision by answering a few key questions about the future, as you see it, for our sector.

Don't have internet access?

Fill out the form on the next page and fax it to us at (518) 434-0392.

## NEWS

*you can*

## USE

Add Your Voice to the Nonprofit Congress! **6**

Declaration for America's Nonprofits **7**

CCSNYS Members Rewarded for Hard Work...Risk Management! **8**

Urbach Community Builder Award to Honor Dedicated CPA Volunteer **9**

# DECLARATION FOR AMERICA'S NONPROFITS

## I Support America's Nonprofits

Nonprofits embody the best spirit and values of our nation. They help millions of individuals and families daily. They *protect, feed, heal, shelter, educate, and nurture* our bodies and spirits. Nonprofits also give shape to our boldest dreams, highest ideals, and noblest causes. They turn our beliefs into action – *as promoters of democracy, champions of the common good, incubators of innovation, laboratories of leadership, protectors of taxpayers, responders in times of trouble, stimulators of the economy, and weavers of community fabric.*

America needs nonprofits and cannot realize its aspirations or successfully tackle the problems it faces without vibrant and effective nonprofits. Likewise, individual nonprofits cannot overcome the significant challenges they face until charitable organizations recognize their value and unite from a position of strength.

The time has come for nonprofits of all sizes and missions to come together to:

1. *Forge a Common Identity Based on Shared Values.* Together, nonprofits will re-imagine, re-position, and re-create a clear identity for the charitable sector, one commensurate with its importance to society.
2. *Develop a Unified Vision and Message.* Together, nonprofits will develop a unified vision and message in order to create a more caring, just, and equitable society.
3. *Exercise a Collective Voice.* Together, nonprofits will embrace their vital role and collective power, and promote their shared vision to the general public, media, business and civic leaders, and government officials.

By signing this Declaration, I call for and show my support of the Nonprofit Congress, an unprecedented movement to unite the sector. The first part of the Nonprofit Congress will bring nonprofits together through community forums or “town hall meetings.” Based on the input from these meetings, nonprofit delegates from across the country – who will convene in Washington, D.C. on October 16 -17, 2006 – will craft a unified vision and message for America's nonprofits. Thereafter, nonprofit leaders and their allies will mobilize to spread this message to society at large, and unite nonprofits for greater visibility, influence, and resources.

I proudly sign this Declaration because I support America's nonprofits. I add my individual voice to the advancement of the common good and call for the start of this nonprofit movement. I encourage and promote this effort to unite nonprofits in order to strengthen local communities and create a more caring America.

To add your name to the thousands signing this Declaration, visit [www.nonprofitcongress.org](http://www.nonprofitcongress.org) or fax this form to 518-434-0392, Attn: Krista Clark

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Email Address: \_\_\_\_\_

## CCSNYS Members Rewarded for Hard Work... Risk Management!



*Peter Andrew, CSPlus, (center) recognizes 2005 NRMA awardees John Herrick of 1st Place Winner Saratoga ARC and Karen Jensen of Education and Assistance Corp for their Honorable Mention*

In an effort to promote effective risk management practices among all nonprofits, Council Services Plus, along with CCSNYS and the Nonprofit Risk Management Center is pleased to announce the **second annual Nonprofit Risk Management Awards (NRMAs)**.

The purpose of the NRMAs is to promote risk management to nonprofits and to honor those members of CCSNYS who practice sound risk management or who have benefited from it by avoiding a potentially troubling circumstance or lessened the devastating effects of one.

The NRMAs will focus on four areas of risk management; 1) Employment Practices, 2) Governance, 3) Finance and 4) Operations; however, entrants

are encouraged to look beyond these areas if they feel it fits within the scope of the award.

Winners will be announced on September 1st, 2006 and presented their awards at the CCSNYS Annual Membership meeting, held in conjunction with CCSNYS' annual financial management conference, Camp Finance, at the Historic Mohonk Mountain House in New Paltz on October 5th, 2006.

- First prize will be an unrestricted cash award to the organization in an amount of \$2,000, a full library of risk management publications from the Nonprofit Risk Management Center AND a complimentary scholarship to the Nonprofit Risk Management Center's Annual Conference to be held in Pasadena, CA from September 18th to the 20th, 2006 including accommodations and up to \$250 towards travel to and from the conference.
- Up to two honorable mentions will each receive an unrestricted cash award to their organizations in an amount of \$1,000 and a full library of risk management publications from the Nonprofit Risk Management Center.

Council Services Plus, Inc., the wholly-owned insurance subsidiary of the Council of Community Services of New York State (CCSNYS) was created to assist all nonprofits with insurance and risk management solutions. Council Services Plus has a strong belief that *any insurance program is not complete unless it is backed by sound risk management.*

So start thinking about risk management and be prepared to pack your bags for Pasadena!

Potential applicants can download an entry form by logging onto [www.councilservicesplus.com](http://www.councilservicesplus.com) or by contacting Peter Andrew, CEO at [pandrew@councilservicesplus.com](mailto:pandrew@councilservicesplus.com)

## Urbach Community Builder Award to Honor Dedicated CPA Volunteer



*Paul Battaglia CPA (left) receives the 2005 Urbach Community Builder Award from Allan Fetterman, CPA.*

The 2006 Michael H. Urbach, CPA., Community Builder's Award will honor a Certified Public Accountant in New York State who has exhibited exemplary board leadership in 501(c)3 charities. This award is named in honor of Michael H. Urbach, CPA. Mr. Urbach was the first CPA to serve as New York State Commissioner of Taxation and Finance, Chaired the State Employees Federated Appeal, was a former partner and Executive Vice President of the international CPA firm of Urbach, Kahn and Werlin, P.C., former Senior VP and Chief Financial Officer of the New York Power Authority, and had a significant impact on New York's nonprofit community through board participation and leadership.

He regarded his involvement, especially with boards having financial and administrative challenges, as a unique opportunity to help enact and embrace organizational change for the betterment of the community.

### AWARD CRITERIA

The criteria for the 2006 Michael H. Urbach, CPA Community Builder's Award is as follows:

- A CPA in good standing and a Member of the New York State Society of Certified Public Accountants;
- Has demonstrated exemplary volunteer board leadership and service benefiting charitable organizations by serving as President/Chair on at least 3 boards of directors and whose board service has resulted in significant and positive organizational impact including, but not limited to, financial turn-around, growth and/or organizational re-structuring;
- Preference will be given to nominees whose board leadership accomplishments have been with community-based charities.

#### Past Award Recipients

- 2005 Award Recipient — Paul Battaglia, CPA, Batavia.
- 2004 Award Recipient — Sherwood H. Levitan, CPA, Middletown.

#### Notification & Award Presentation

The successful candidate will be notified no later than July 18th. The Award will be presented on October 5th during the evening dinner of CCSNYS-Camp Finance 2006 to be held at Mohonk Mountain House in New Paltz, NY. Camp Finance 2006 is the premier financial management conference for nonprofits in the state. Accommodations for the evening of the award for the honoree and his or her guest will be compliments of CCSNYS.

#### Questions and Nominations

Please direct all questions and nominations to Doug Sauer, CCSNYS, Executive Director or via email at [dsauer@ccsnys.org](mailto:dsauer@ccsnys.org).

# Learning & Leading: The CCSNYS Executive Director Retreat Celebrates Three Successful Graduating Classes!

They came from the four corners of New York State. They came seeking the knowledge and the power to become a successful Executive Director. Over the past 18 months CCSNYS has welcomed those in search of this knowledge to three classes of our new “Being A Successful Executive Director” training session. Over three days these participants immersed themselves in the skills needed to effectively manage a nonprofit in today’s challenging environment. Whether it was learning about board and staff management,

*“Every bit of it was important and useful information. The manual we get to take with us is fantastic!”*

New York State nonprofit incorporation law, human resources, fund raising and resource development, budgeting and fiscal accountability or insurance and employee

*“Playback theater is an excellent tool and provides a different way to learn.”*

benefits, these students (classes had approximately 20 participants each) absorbed a wealth of information. The classes were held in Cooperstown, Saratoga Springs and Glen Cove Long Island. Each class was structured around a core curriculum, but there was also time allotted for individual “appointments” with nonprofit experts on how to deal with specific or confidential problems related to running their organization. There was also time left for reflection and fun. The School of Playback Theatre was on hand at each session to provide a visually stimulating and at times comical look at the complicated and often times stressful world of the Executive Director.

The next class of Executive Directors is being recruited right now. To be held November 1st through 3rd in Syracuse, this fourth class will be designed in a similar way to



*The School of Playback Theatre gets ready to provide a little humor for the participants.*



*April 2005 Executive Director Retreat Class - with CCSNYS Staff & Presenters — Saratoga, NY*

*“This training provides nests and wings for new nonprofit Executive Directors!”*

its predecessors. To get more information about curriculum and costs please contact Melissa DeMidio at [mdemidio@ccsnys.org](mailto:mdemidio@ccsnys.org) or call (800) 515-5012 ext. 126. Class size is limited to 23 participants.



*November 2004 Executive Director Retreat Class - Cooperstown, NY*

## EDUCATION and EVENTS

*Learning & Leading: The CCSNYS Executive Director Retreat Celebrates Three Successful Graduating Classes* **10**

*CCSNYS Announces Board and Staff Workshop Series for Spring 2006!* **11**

*5th Annual Camp Finance Continues Accountability Dialogue* **14**

# CCSNYS Announces Board and Staff Workshop Series for Summer 2006!

For more information and to register please visit us online at <http://www.ccsnys.org/babn/index.html>

**More options than ever before!** We are pleased to provide your nonprofit with various options for staff & board education & training in 2006. There is something for everyone at CCSNYS!

- **Board Training.** Comprehensive, *free* trainings for board members! Our *Achieving Excellence in Governance* Board Training Series is only open to board members, prospective board member CPAs, and executive staff when accompanied by a board member.
- **Staff Training.** High quality, affordable workshops geared towards empowering your staff and volunteers with realistic tools and skills.
- **Advanced Skills.** Our "*Online Experts Forum*" can be taken right from your desk. Join your colleagues from around the state for this one-of-a-kind series. Delivered to you by CCSNYS' expert level management staff.

CCSNYS' knowledge of emerging trends and issues that effect the mission-based operations of nonprofits is second to none. CCSNYS offers a range of training opportunities across the state in areas such as fund development, risk management, board development, financial responsibilities, strategic planning, and more.

CCSNYS is a membership-based nonprofit organization specializing in providing services, training, products, and assistance to nonprofits and communities. We currently have over 1,200 members in New York State and serve many more through trainings and conferences. Whatever your needs may be, from insurance, legal services, board training, to discount office supplies, we are here to help. This seminar series is for you, in appreciation and support of your desire for excellence. If you have any questions, please feel free to contact us via phone, fax, email, or our website. *We look forward to seeing you there!*

## Staff & Management Educational Training Series

MAY	JUNE	JULY
2nd Roles and Responsibilities and Legal obligations for nonprofit Board Members, Syracuse	6th Getting Down to Basics: Board Roles & Responsibilities, Corning	15th Grantseeking on the Internet in 2006, Binghamton
16th Entrepreneurial Venture Primer Part I, Utica	12th Strategic Planning for the Future, New York City	15th Grantwriting for Success: 5 Important Steps for Grantwriters, Binghamton
16th Entrepreneurial Venture Primer Part II, Utica	12th Fund Development 101: Core Competencies for Staff & Board, New York City	20th Strategic Planning for the Future, Mid Hudson Valley
25th Advanced Nonprofit Accounting for ED's, CEOs, CFOs, and Those in Charge of Dollar & Cents, Online Experts Forum	14th Mining for Gold: Major Gifts, Albany	20th Fund Development 101: Core Competencies for Staff & Board, Mid Hudson Valley
	14th Capital Campaigns, Albany	22nd Strategic Planning for the Future, Buffalo
	15th Human Resource Issues, Oneonta	22nd Fund Development 101: Core Competencies for Staff & Board, Buffalo
	15th Getting Involved: Volunteer Management, Oneonta	

## Board Members Achieving Excellence in Governance Training Series

JUNE	JULY	AUGUST
12th Roles & Responsibilities of Nonprofit Board Members	20th Roles & Responsibilities of Nonprofit Board Members	22nd Roles & Responsibilities of Nonprofit Board Members
12th Finding & Keeping Motivated Board Members	20th Finding & Keeping Motivated Board Members	22nd Finding & Keeping Motivated Board Members
12th Strengthening the Board's Relationship With Staff Leadership	20th Strengthening the Board's Relationship With Staff Leadership	22nd Strengthening the Board's Relationship With Staff Leadership
<i>These are all in New York City</i>	<i>These are all in Mid Hudson Valley</i>	<i>These are all in Buffalo.</i>

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## 5th Annual Camp Finance Continues Accountability Dialogue

Continuing to be recognized as the foremost financial management conference for nonprofits in New York, **Camp Finance 2005** took place at historic Mohonk Mountain House in New Paltz, New York on October 6 and 7, 2005.

Developed by CCSNYS' Financial Accountability and Compliance Services (formerly the Nonprofit Accounting Service Center), the two-day conference's title was "Make Your Voice Heard; Let the Numbers Do the Talking." Attending the event were executive directors, key financial staff, and board members of nonprofits both large and small. Those taking part described the conference as having "the best workshops offered-anywhere," "extremely helpful," "very informative," and "excellent presenters."

In its fourth year, Camp Finance offered a wide range of sessions led by experts in nonprofit financial management. And, New York's nonprofits responded, traveling from the four directions of the compass to learn, network, and share ideas and expertise at the event that has rapidly become known as the state's flagship financial management conference.

The first day of the conference opened with a Keynote address, moderated by CCSNYS Executive Director, **Doug Sauer**, discussing "The Nonprofit Accountability Dialogue: What it Means to You." **William Josephson, Esq.**, former Assistant Attorney General and member of the Independent Sector's Expert Advisory Group once again led off the Camp Finance with an update on the work of the Independent Sector Panel and its final report to the Senate Finance Committee, as well as the AICPA Toolkit available to nonprofits.

**Dan Moore**, Vice President of Public Affairs for Guidestar, provided our campers with an overview of the Nonprofit Database and additional services available to nonprofits. The **New York State Office of State Comptroller's Joan Sullivan** and **Diane Taylor** provided an update of the Office's Vendor Responsibility and Future of the Central Accounting System, (FOCAS) Initiatives.

With time allowed for visits to our exhibitors, a wide array of sessions focused on accountability, financial management, turnaround and crisis management and entrepreneurial ventures were led by experts including **Allen Fetterman, CPA, (Ret.)**, **Allan Blum, CPA** and **David Rottkamp, CPA**, of Loeb and Troper; **Joanne Golden, CPA**, Dermody Burke & Brown CPAs LLC; **Hilda Polanco, CPA**, and **Terrence Cook** of Fiscal Management Associates, LLC; **Dr. K. Michael Mathews, MBA** Coordinator, College of St. Rose; **Frank San Felice, JPS Solutions, LLC**; **Kevin Quist, BTQ Financial**; **Tom Luzzi, Parsons Child and Family Center, Inc.**; **Paul Matrose, Associate Auditor**,

*Those taking part in Camp Finance described the conference as having "the best workshops offered-anywhere," being "extremely helpful," "very informative," and having "excellent presenters."*



*Representatives from ADP meet with Camp Finance attendees.*



*Allan Fetterman introduces the 2004 Urbach Award Winner Sherwood Levitan.*



*Bill Josephson takes a question from the audience.*



*Camp Finance Sponsors Rogers & Company Display their Products, Services and Member Discounts!*

Health Research, Inc.; Geri Stengel, Stengel Solutions; Bill Dessingue, Charitable Venture and Charitable Leadership Foundations; and serving as facilitators from the CCSNYS staff were Doug Sauer, Executive Director; Kelly Mathews, Director, FACS, Michelle Jarvais, CFO; Denise Harlow, MSW, Director, Nonprofit Services; David Watson, Esq., Director, Legal Accountability and Compliance Services; Michael West, Esq., Legal Advisor; Meghan Johnston, Independent Advisor; and Claire Higgins.

Held in conjunction with Camp Finance is CCSNYS's Annual Business Meeting and Reception. Highlights of the 2005 meeting included presentation of the Michael H. Urbach, CPA Community Builder Award, co-sponsored by the New York State Society of Certified Public Accountants (NYSSCPA) to Paul Battaglia, CPA of Batavia, NY. Sherwood H. ("Woody") Levitan, CPA, of Middletown, NY, the 2004 award winner, attended the presentation, given by Allen Fetterman, CPA, representing the NYSSCPA as chair of its Not-for-Profit Committee and member of the Selection Committee. The award was named in honor of Michael H. Urbach, CPA, and honors a Certified Public Accountant in New York State who has exhibited exemplary board leadership in 501(c)3 charities. In addition to being president of CCSNYS' Board of Directors, Mr. Urbach was the first CPA to serve as New York State Commissioner of Taxation and Finance, Chaired the State Employees Federated Appeal, was a former partner and Executive Vice President of the international CPA firm of Urbach, Kahn and Werlin,

P.C., former Senior VP and Chief Financial Officer of the New York Power Authority, and had a significant impact on New York's nonprofit community through board participation and leadership. He regarded his involvement, especially with boards having financial and administrative challenges, as a unique opportunity to help enact and embrace organizational change for the betterment of the community. Mr. Urbach passed away tragically two years ago.

Also presented at the dinner was the first annual Nonprofit Risk Management Award, presented by Council Services Plus, CCSNYS' insurance brokerage subsidiary. Together with the Nonprofit Risk Management Center in Washington D.C., CS Plus created the criteria for the award that recognizes outstanding achievement where risk management played a major role in the avoidance of accidents or potentially harmful situations. The 2005 recipient of the award was Saratoga County ARC, who implemented a series of staff trainings aimed at reducing workplace injury to staff. As a result of their trainings, Saratoga County ARC reduced their claims and received a premium refund of nearly \$80,000 from their workers compensation provider. Education & Assistance Corporation in Nassau County was the 2005 recipient of the Honorable Mention for their reduction in their workers compensation claims as a result of their safety protocols in their emergency procedure manual.



*Dan Moore, VP, Public Relations, Guidestar gives a morning Keynote address.*



*Joan Sullivan, Assistant NYS Comptroller updates on FOCAS Initiative*



*Staff from the AIDS Institute and Kelly Mathews (2nd from right) enjoy the campfire*

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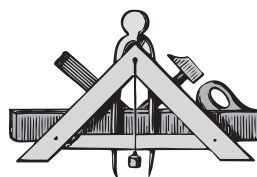
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# The Special Events Toolbox A Nuts-and-Bolts Guide to Planning and Implementing Successful Special Events Campaigns for Nonprofit Organizations



Lauren Goldstein. New York, NY: Cause Effective, 2004

Review by Denise Harlow, CCSNYS, Inc.

Whether it's a black tie gala at a swanky hotel, a 24-hour dance-a-thon in the school gym, or an open house at the new facility, successfully planning and executing a special event can be a daunting and complex process. Many of us take on special events as a way to raise funds and visibility yet many events fall short of our expectations. Making an event successful and raising real revenue is a significant challenge and takes time, energy and careful planning. *The Special Events Toolbox A Nuts-and-Bolts Guide to Planning and Implementing Successful Special Events Campaigns for Nonprofit Organizations* by Lauren Goldstein provides readers with a roadmap and practical tools to help them create successful events.

*Many of us take on special events as a way to raise funds and visibility yet many events fall short of our expectations.*

Ms. Goldstein is an experienced professional in fund development and executing special events and it shows in the thoroughness of her text. This book is a practical resource for boards, volunteers and staff of nonprofit organizations of all sizes. More than 100 practical tools and resources are provided for all event phases including tracking sheets, draft meeting agendas, model invitation and thank you letters, budgets, timelines, volunteer job descriptions and RFPs for vendors. Extensive lists of items and issues to consider are also provided that will give the event planner the peace of mind that they have considered every aspect of the event. In addition to the tools, case studies are provided to add context for the reader.

*The book doesn't let readers off the hook after they have pulled off their fabulous event. It also covers the evaluation phase of special events that often gets put aside after the excitement of the event dissipates.*

*The Toolkit* provides insight into all stages of planning, execution and follow-up starting with organizational assessment and event goal clarification. Budgeting, sponsorship, marketing, logistics, staff and volunteer management are all included with tools and case examples provided.

In addition to the key elements of a successful event, Ms. Goldstein spends two chapters on activities that can expand the "profitability" of your event, journals and auctions. Both labor intensive activities, the author again cautions readers to consider and plan these activities carefully and with the same level of detail as the actual event. She further recommends "to treat the activity (journal or auction) as a separate event in your campaign that happens to be occurring on the same day as another event." Her cautions and practical tools in these two activities add value to the book in general.

She doesn't let readers off the hook after they have pulled off their fabulous event. The book also covers the evaluation phase of special events that often gets put aside after the excitement of the event dissipates and the hard work of staff and volunteers is focused on other activities. Taking a hard look at the event's real outcomes versus time and cost is a key element to future event success.

CCSNYS recommends *The Special Events Toolbox A Nuts-and-Bolts Guide to Planning and Implementing Successful Special Events Campaigns for Nonprofit Organizations* as a valuable component of your fund development library.

## LOOKING to the FUTURE

*The Special Events  
Toolbox Review* 17

Funding Your  
Vision All Depends  
on How you Say it... 18

See Page 20 for more information on how CCSNYS members can get this book at a discount.

## Funding Your Vision All Depends on How you Say it....

By Tom Suddes and Nick Fellers, The Suddes Group

For the past 12 years we've played host to hundreds of organizations at our leadership center in Columbus, OH. These organizations include large colleges, regional offices of great organizations such as the Red Cross and Alzheimer's Association and often start-ups. They make the pilgrimage to Ohio for our sales training camps because they want to raise a lot more money. Although they come to us for 'fundraising help' we spend the first morning of training camp focusing on changing our mindset. In fact, our very first activity is very primary; we begin by changing our vocabulary.

To really make a quantum leap in our funding we need to first change the way we think and talk. Attendees to our 2004 training camp showed an average increase of 42% in major gifts funding last

*"No one reading this woke up this morning excited about 'not making money'.*

*It's not the reason you do what you do."*

We don't believe we should be defining ourselves in the negative. Think about it...our words both express and drive our actions.

What if, instead of being 'not-for-profits' we were **For Impact** organizations? Isn't that what drives us? What if instead of talking about 'charity' we engaged people with our 'cause'? Tom Peters says, "A great cause gets people out of bed in the morning!" Can we assume that a 'charity' encourages people to hit the snooze button? If you want to make a real leap in your funding, talk about impact and cause – your *raison d'être*! Don't talk (or even think about) 'not-for-profit' and 'charity'...that's for the IRS.

Forget about 'mission statements'. Instead, clarify your message. Everyone's mission statement was written by a committee with a thesaurus! The 'private sector' has the same challenge. And lead with your vision...not survival. No one wants to fund the leaky roof or take care of payroll challenges. Survival pitches only work for tsunamis and hurricanes.



Tom Suddes provides a workshop in New York City.



Tom Suddes drives home his ForImpact Message.

year. Nearly every success story gives credit to 'new words' used in the office and on calls.

Words are important! We would challenge every organization to think about the language it uses. Most of the 'words' we use on a day-to-day basis are outdated, outmoded and not engaging or worse yet, simply wrong.

First, let's abandon the term 'not-for-profit'. No one reading this woke up this morning excited about 'not making money'. It's not the reason you do what you do.

These simple word shifts are a very very big deal. We've worked with hundreds of organizations, raising well over \$1 billion. Success begins with getting the team on board with a new team language. That includes our wonderful volunteer leaders. We can't be exceptional with people 'on THE board'. Instead, we need just a handful of champions that are 'ON board'.

Unless we're the Red Cross, let's erase 'donor' from our vocabulary. Instead, let's realize that people that put money and resources into our organization are **investors**. Question: What does every investor want from his or her money? Answer: **A return-on-investment.**

And finally, how many of you reading this really really love ‘asking people for money’? Unless you’re one of the rare birds that love asking for money then make a big shift and start thinking about presenting an opportunity.

We are “for impact” organizations. Let’s talk and act like it. Let’s engage potential investors with our cause and our vision and present them with the opportunity to save lives, change lives or impact lives. After all, that’s quite a return-on-investment.

Share this change in vocabulary with your entire team and your board.

Not for profit	For Impact
Charity	Cause
Mission Statement	Message
Survival	Vision
Inform	Involve
On the Board	On Board
Competition	Collaboration
Donor (donation)	Investor (investment)
“Warm fuzzies”	Return-on-investment
Transactions	Relationships
Appointments	Visits
Ask for Money	Present the Opportunity

For Impact provides tools, training and ideas to change the way nonprofits fund their vision. Visit [www.forimpact.org](http://www.forimpact.org) for more information and free training seminars. Tom ([tom@forimpact.org](mailto:tom@forimpact.org)) and Nick ([nick@forimpact.org](mailto:nick@forimpact.org)) can be reached by email or at 1-800-786-1113.

*Tom Suddes to offer Exclusive Training for CCSNYS Members Only!*

## **How To Make a \$1 Million Gift Call**

**May 16th @ 3pm**

Registration is only \$10

Register now for this *exclusive online event*. Many of you saw Tom Suddes of *ForImpact.org* give an energy-filled keynote at our Money for Mission conference in Cooperstown last summer or at our 3-hour workshop in NYC in January. We’re having Tom back to share with you the secrets of the major gift call - delivered to CCSNYS members in this one-hour training session.

**Overview:** This session focuses on HOW to make a major gift call on your top prospects. It will give strategies for how to identify and get to your prospects and focus on the mechanics of the call including the opening, dialogue, and “the ask.” Other learning points include:

- The major gifts process
- How to identify prospects.
- How to build a strong and simple message.
- The only presentation tool
- How to manage the flow of the call
- How to overcome objections

To register please log onto [www.ccsnys.org](http://www.ccsnys.org) and click on education events or contact Melissa DeMidio at [mdemidio@ccsnys.org](mailto:mdemidio@ccsnys.org).

Gather your board and staff members in a room and put this seminar on speaker phone to get the most out of it!

## Membership Benefits Spotlight!

### *“Must Have” Special Events Resource at a Special Discount for CCSNYS Members!*

The **Special Events Toolbox** brings together nearly 25 years of *Cause Effective's* event planning expertise to present a complete how-to guide to special events campaigns for nonprofit organizations. Whether you are an event novice or a seasoned veteran, The Toolbox will help you think through and maximize the opportunities that special events can provide, while helping you avoid common pitfalls. Through worksheets, templates, sample materials and other tools, this book provides you with a clear plan for how to create and implement a successful special events campaign. The Toolbox covers everything from setting objectives and fundraising to execution and evaluation.

We are excited to offer you this publication with the hopes that you will use it to boost the success of your events.

For a limited time, Cause Effective is offering The Toolbox to all CCSNYS members in good standing for \$42.50! That's a 15% discount off the cover price. Please contact Valerie Venezia at [vvenezia@ccsnys.org](mailto:vvenezia@ccsnys.org) for your "Members Only" order form.



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# Finger on the Pulse: An Update on the Current Fundraising Climate

By Serena Marerro, Fund Development Specialist, CCSNYS, Inc.

The typical measurable indicator of the level of charitable giving in the U.S. from individuals, foundations and corporations is the strength of the economy and the stock market. In fact, Giving USA 2005, (a publication of the Giving USA Foundation, researched and written by the Center on Philanthropy at Indiana University) reported that the 5 percent increase in charitable contributions for 2004 directly correlated to a nearly 4 percent increase of the gross domestic product, an increase of almost 3 percent for personal income, S&P 500 Index increase of nearly 7 percent and an increase in corporate profits of almost 10 percent.

**According to *The Chronicle of Philanthropy's* annual ranking of the 60 donors who give the most money to charitable causes, there was a sharp drop from more than \$10-billion given in 2004 to \$4.3-billion given in 2005.**

While complete data on charitable giving in 2005 won't be available for several months, some indicators are sketching the picture. According to *The Chronicle of Philanthropy's* ("How the Wealthy Give," February 26, 2006) annual ranking of the 60 donors who give the most money to charitable causes, there was a sharp drop from more than \$10-billion given in 2004 to \$4.3-billion given in 2005. Wealth management advisors point to the flat stock market in 2005 as the reason for this dramatic drop. Of course, this data has little meaning for organizations that are not an institution of higher education, hospital or medical center – the primary recipients of principal gifts from these top level donors.

Of greater concern to the majority of the nonprofit sector are the results of surveys and studies regarding how the outpouring of relief funds last year to help the victims of epic disasters -- the South Asia tsunami, Hurricane Katrina and the Pakistan earthquake -- may be creating overall "donor fatigue." A study sponsored by several firms working with nonprofit organizations (CommUlinks of Colorado, PhilanthropyNow, M.L. Consulting, and Whole Brain Technology) found that over 5 percent of donors diverted at least some of their regular annual giving to disaster relief. Nearly 57 percent of the nonprofits that responded to this study reported a decrease in annual campaign income and 94 percent of these nonprofits indicated that the decrease was directly tied to, or suspected to be tied to, diversion of dollars to disaster relief. The good news is many nonprofits report that such catastrophes seem to help their fund-raising efforts due to the heightened awareness of the need for nonprofit groups.

Historically, charitable giving bounces back very quickly to previous levels after such disasters. However, the need for support for disaster relief has far from ended. In fact, in January 2006, the New York Regional Association of Grantmakers (NYRAG) convened 30 of its grant making members to discuss long-term funding strategies for providing ongoing philanthropic support to meet recovery and rebuilding needs in the Gulf region. To date, NYRAG members have contributed \$88 million to hurricane relief.

During uncertain times such as these, nonprofits should take the opportunity to increase and improve communications with donors, making sure they fully understand the importance and impact of their donations on the organization's mission and the people served. Additionally, nonprofits should assure that their funding base is diversified so that any gaps in funding will have minimal impact on overall operations.

***5% of donors diverted at least some of their regular annual giving to disaster relief***

## STAYING *the* COURSE

Finger on the Pulse	21
Five Things that Should Never Appear in an Employee Handbook	23
Attorney General Calls for Sweeping Medicaid Fraud Laws	24

## Membership Benefits Spotlight – 2,500 Courses At Your Fingertips....Anytime!

The time and cost associated with sending staff off-site for professional development opportunities often does not yield a suitable return for the costs. To help alleviate this burden on our members, and nonprofits in New York; CCSNYS has partnered with NYWired for Education to offer online training in hundreds of topics. The courseware, authored by SkillSoft a world-leader in online learning content, represents the most extensive e-learning catalog in the industry. Subjects range from courses on Management and Leadership to Operating Systems and Server Technologies. From the entry-level employee all the way up to CEO, we have the courses to help you enhance your skills and grow on a personal and professional level.

One of the best features of this online learning environment is that once purchased, **you will have access to the course(s) for 12 months** so that you can take your time learning the material and refer back to the course to review forgotten information as the need arises.

NYWired's online courses may be taken at anytime during the day, right from your desk, and may be used to enhance current skills or develop new ones (accounting and web development for example).

CCSNYS has negotiated an exceptional price for this services at: \$25 per course (50% off the retail price of \$50) to provide resources for employees, board and staff members who would like to advance their technology and business skills.

To access these courses log onto: [www.uswired4ed.net/ccsnys](http://www.uswired4ed.net/ccsnys)

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# Five Things That Should Never Appear in an Employee Handbook

By Melanie L. Herman, Executive Director, Nonprofit Risk Management Center



An employee handbook is a valuable risk management tool when it lays down the organization's expectations and spells out the consequences if employees don't live up to the expectations. There are numerous resources available to help guide you with regard to essential handbook components. This article focuses on five common mistakes found in employee handbooks and how to remedy them. Why not double-check your handbook to make certain that you haven't committed one of these errors?

1. **Permanent**—The word permanent appears in employee handbooks to distinguish employees who have completed a work review or probationary period. The idea behind the use of the term is that once employees complete probation, they are “permanent.” However, permanent should never appear in an employee handbook, or be used to describe employees. Using the term weakens the important doctrine of “at-will employment”—the idea that the employment relationship may be terminated at any time and for any legal reason. Choose a more appropriate term such as “regular” to describe staff members who have completed your work-review period.
2. **“We Do Not Pay Overtime”**—In recent years I have seen this phrase appear in handbooks. The good intention behind its use is that the nonprofit wants to warn employees that overtime work isn't permitted because overtime pay (time and a half or premium pay) is beyond the nonprofit's means. This phrase suggests, however, a nonprofit's intent to violate the wage and hour laws. If a non-exempt employee works overtime, he or she must be paid premium pay, regardless of the nonprofit's budgetary situation. Along with that pay the employee may be disciplined for violating the organization's rules about working overtime. That discipline could be mild to severe, ranging from a verbal warning to suspension or termination for repeated violations.
3. **The Name of (or reference to) Another Organization**—You might be surprised to learn that the practice of copying another organization's employee handbook and substituting the new organization's name for the old is quite common. Starting with someone else's handbook isn't an awful idea, as long as you're committed to undertaking a thorough review of every line and word to adjust them to meet the needs of your nonprofit. Never rely simply on the “search and replace” feature of your word processing program or your speed-reading skills. Remember that policies that are suitable to another nonprofit may be entirely unsuitable in your organization. A recent client presented a handbook that contained a generous family leave provision. The provision assured compliance with

the Family and Medical Leave Act that applies to employers with 50+ employees. But it wasn't suitable for a nonprofit with a staff of three.

4. **“And after the third violation...”**—Does your employee handbook contain overly prescriptive disciplinary measures? During a recent consulting assignment I discovered that our client's employee handbook contained nearly three pages of text pertaining to employee tardiness and absenteeism. When we queried the executive director about his ability to follow the detailed policy, he admitted that he had no idea what the policy said nor was it his practice to follow the policy. The best handbooks afford management maximum discretion in determining the discipline that should apply in a given instance. Statements such as “violation of this policy could result in discipline, up to and including termination” indicate that management will determine the appropriate discipline in a given instance. Of course, it is essential that managers understand the importance of being even handed when disciplining employees.
5. **“Confidentiality is assured”**—Whether you are outlining your policy prohibiting sexual harassment or indicating your employee protection (whistle-blowing) policy, the topic of confidentiality often arises in an employee handbook. While it deserves mention, it's never appropriate to provide outright assurances of confidentiality when the nature of the matter may require that persons within the organization be informed of the allegations or status of an investigation. Instead of promising confidentiality, consider stating that “All complaints will be investigated promptly and as confidentially as possible.”

Melanie Herman is Executive Director of the Nonprofit Risk Management Center and co-author of *Taking the High Road: A Guide to Effective and Legal Employment Practices for Nonprofits*. To learn more about the Center, visit [www.nonprofitrisk.org](http://www.nonprofitrisk.org) or contact the author at (202) 785-3891.

CCSNYS is the regional Satellite Office for the Nonprofit Risk Management Center. Our members have access to NRMC's diverse array of publications, online workshops and risk management tools at a significant savings.

Please visit [www.nonprofitrisk.org](http://www.nonprofitrisk.org) to learn more about NRMC. Contact our membership office if you have questions about getting your discounts!

# Attorney General Calls for Sweeping Medicaid Fraud Laws

by Mark Thomas, Partner, Wilson Elser Law Firm

During the past year, increased attention has been devoted to skyrocketing Medicaid costs and their burden on state and local taxpayers. While the debate rages about the causes and legitimacy of the state's expenditures, one culprit stands out – fraud, waste and abuse. These issues are not confined to a select few categories of Medicaid program participants, but come from all sources: recipients, providers of all kinds, and even Medicaid managed care plans. Fraud, waste and abuse can be found in every segment of the vast Medicaid system.

*“While the debate rages about the causes and legitimacy of the state’s expenditures, one culprit stands out – fraud, waste and abuse”*

Last July, the New York Times ran a series of articles reporting on system abuses and official inattention to the problem. According to the Times, some 10% of all

Medicaid expenditures in New York are inappropriate because of fraud and mistakes. Several observers have discredited the Times' estimates, but the impact of the stories was not lost on policy-makers.

Legislative leaders, particularly in the Senate, immediately called for strengthened enforcement of laws already on the books and sharply criticized the Department of Health and the Attorney General for lax oversight. In August, Governor Pataki issued an Executive Order creating the new position of Medicaid Inspector General to oversee and coordinate the State's efforts to reduce waste and fight fraud. In September, both Houses of the Legislature held public hearings to hear testimony on the extent and cause of the problem and the steps necessary to begin correcting the issue.

At the legislative hearings, representatives of the Department of Health and the Attorney General's office spoke at length on the challenges facing enforcement agencies that try to detect improper payments in a system that processes hundreds of millions of claims annually. The Health Department emphasized its auditing and data mining efforts and conceded that its capabilities would be enhanced with more resources and the addition of several new auditors.

The Attorney General's representative struck a somewhat different chord. According to the Attorney General's office, efforts must “go where the money is”, meaning that institutional providers, not individual practitioners, should be targeted. The thinking apparently is that since institutional providers receive larger amounts of Medicaid funds, it naturally follows that these are the sources of larger amounts of fraudulent

Medicaid billings. By focusing on larger providers, enforcement agencies would be able to reap a “bigger bang for the buck.”

The Attorney General's office called for the enactment of new criminal laws for the filing of fraudulent claims, more resources for the Office's Medicaid Fraud Control Unit and for new authority for the Unit to engage in extensive “data mining”. The centerpiece of the Attorney General's recommendations was the enactment of a New York State “False Claims Act” modeled on a federal law that dates back to Civil War times. It is not specific to health care and would apply to any recipient of State funds.

The federal law makes it illegal to file a false claim with a federal agency with the expectation that it will be paid. One point in the law that stirs ongoing debate is that a claim can be considered “false” even though the claimant did not intend to be filing a false claim. In other words, a mistakenly false claim may be prosecuted under the law.

The penalties under the federal law, which the Attorney General believes should be enacted in New York, are substantial. The damages due to the government are three times the actual amount of funds received as a result of the false claims. In addition, penalties are assessed. The amount of penalties ranges from \$5,000 to \$10,000 per claim. This means that for each false claim, the recovery is three times the amount paid plus at least \$5,000; if a matter involves hundreds of even small claims, the penalties are steep.

The federal law includes a controversial provision that the Attorney General believes is essential: authorizing private citizens to bring false claims

prosecutions as if they were government prosecutors. Private citizens that “self-deputize” and bring cases alleging the submission of false claims, so-called “qui tams” are awarded a percentage of the government's recovery. If the government takes over the case that the qui tam started, the qui tam's share is 10-25% of the total recovery. If the government declines to get involved and the qui tam prosecutes the case to its conclusion, the qui tam's share is 15 – 30% of the total recovery. It is up to the court

*“One point in the law that stirs ongoing debate is that a claim can be considered “false” even though the claimant did not intend to be filing a false claim. In other words, a mistakenly false claim may be prosecuted under the law”*

to determine the qui tam's share, taking into account the value of the "insider" information brought forth by the qui tam and the qui tam's assistance during the course of the proceedings. The qui tam is entitled to an award even if (s)he participated in the scheme and personally profited from it.

The Attorney General repeated his call for a false claims act at the September legislative hearings, but by mid-October, he called for more drastic measures. He concluded that proposals then "on the table" were necessary but not enough and that what was needed is a New York "Martin Act" for health care to give the Attorney General a stronger weapon in his fraud-fighting arsenal.

The Martin Act is a State law that was enacted in 1921 to fight corruption in the securities field. At that time, there was little federal oversight of securities and the stock markets and states were taking it upon themselves to enact new measures. The Martin Act still only applies to the securities industry and to some extent to real estate financing arrangements. Over the years, New York Attorneys General have inconsistently used the Act, preferring to have federal authorities, namely the Securities and Exchange Commission which was created in 1933, take care of securities enforcement.

Attorney General Spitzer, however, has vigorously applied the Martin Act in several investigations and prosecutions of the securities industry. Pointing to those successes, the Attorney General believes that a companion "Martin Act" be enacted for health care.

The Martin Act has been called the most sweeping investigational law in the country – broader than any federal or other state law of its kind. The law allows the Attorney General to open an investigation based on a complaint or if the Attorney General believes it is in the public interest to do so. There is no mechanism to ask a court to rule on whether the commencement of an investigation is valid: it is completely in the Attorney General's discretion.

Once an investigation is opened, the Attorney General has the power to compel witnesses to appear at a hearing. Here again, the Attorney General has complete discretion to decide if the hearing will be "private" or "public". A private hearing is indeed private – it is held in the Attorney General's office with only the Attorney General, his deputies and the witness present. In contrast, the Attorney General may order a public hearing, which is held in a public forum, usually a court room, where the public and the media are allowed to attend. If a person who is called to testify at either type of hear-

ing fails to do so, it is a misdemeanor, meaning that jail time could be imposed. Similarly, the witness must produce all papers and documents requested by the Attorney General, with similar penalties for failure to do so.

Other features involving hearings are especially sobering. If a witness refuses to answer a question, it is presumed that the witness is or has been engaged in fraudulent and illegal behavior. Under the Martin Act, a court may enjoin the witness from continuing to participate in the securities business solely based on the presumption – the Attorney General need not produce further evidence in support of the court order. If the hearing is private, it is a misdemeanor for the witness to disclose what occurred, except only to his/her attorney, unless given permission to do so by the Attorney General. Again, the penalty for conviction of a misdemeanor may be jail time.

A third feature of a "Martin Hearing" is that witnesses have no right to have an attorney present. The courts

have upheld this provision, ruling that there is no right to counsel when a proceeding is "investigational", not "adjudicative".

The courts have interpreted the Martin Act extremely broadly, concluding that its remedial purposes justify vigorous application. The Attorney General's authority

to summon witnesses and compel the production of books and records has been held to be so extensive that it is "almost upon mere request". With regard to private hearings, one commentator has observed that "the curtain of secrecy surrounding Martin Act investigative hearings has been held to be impermeable... and ... the secrecy of confidential hearings conducted by the Attorney General has thus been absolute in its entirety", exceeding even confidential requirements of grand jury proceedings.

No doubt a legislative proposal to enact a "Martin Act for Health Care" will stimulate vigorous debate. Proponents will see a law of this kind as necessary to root out improper behavior regarding Medicaid billing and payments. Opponents will likely question whether such drastic measures are called for and voice concern that the potential for prosecutorial abuse is too great. The next few months will reveal Legislative thinking on the wisdom of a health care Martin Act. Meanwhile, every health entity, large or small, not-for-profit or for profit should be aware of the spirited debate now transpiring on the lightning-rod issue of Medicaid fraud, waste and abuse.

*The Martin Act has been called the most sweeping investigational law in the country – broader than any federal or other state law of its kind.*

# Welcome New CCSNYS Members

November 1st 2005 through March 31, 2006

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Amethyst Women's Project, Inc. - Brooklyn	Marriage Equality USA - New York City
Arthur Ashe Institute for Urban Health - Brooklyn	Mediation Services - Oneonta
Arts In Orange - Middletown	Mental Health of Onondaga County - Syracuse
Body Positive, Inc. - New York City	Miles of Hope Breast Cancer Foundation - LaGrangeville
Cappella Festiva Chamber Choir & Orchestra - Poughkeepsie	NEST (Neighbors Establishing Support in Troy) - Troy
CASA of Ulster County - Kingston	New Beginnings MSC, Inc. -- Troy
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Childcare Council of Suffolk County - Commack	North Country Library System -- Watertown
Children's Mental Health Coalition of Western New York -Buffalo	Northern Dutchess Symphony Orchestra - Wappingers Falls
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Citihope International - St. Andes	NYSARC of Dutchess County - Pleasant Valley
Coming Together Festival of Dance & Music, Inc. - New Paltz	On Point for College - Syracuse
Cooperstown Winter Carnival, Inc. - Cooperstown	Perinatal Network of Monroe County, Inc. - Rochester
Counseling Service of the Episcopal Diocese of Albany, NY	Peter C. Alderman Foundation -Bedford
Earth Mentoring Institute - Cherry Valley	Potsdam Public Library - Potsdam
Ebenezer Missionary Baptist Church -- Schenectady	Roxbury Association for the Environmental Preservation -- Denver
Empire State Speech & Hearing Clinic, Inc. - Spencer	SMAC- Salsa Music Appreciation Club - Vestal
Exhibition Alliance (The) - Hamilton	Smithy-Pioneer Gallery, Inc. - Cooperstown
Failte Care Corporation - Long Island City	St. Paul's Center, Inc. -- Rensselaer
Friends of Recovery of Delaware & Otsego Counties - Cooperstown	Troy Waterfront Farmers' Market - Troy
Fulton Community Development Agency - Fulton	Upstate Jail Ministries - Argyle
Gliding Stars - Amherst	West Kortright Centre, Inc. - East Meredith
Gloversville Health Association Public Library - Gloversville	Woodstock Artists Association& Museum - Woodstock
Good Shepherd Volunteers - New York City	Young Rhinebeck - Rhinebeck
GroWest - Utica	
Healthcare Communication Project, Inc. - Stone Ridge	
Holocaust Museum and Study Center - Spring Valley	
Home to Home Pet Adoption Services, Inc - Cooperstown	
Inwood House - New York City	
Jewish Community Center of Dutchess County - Poughkeepsie	
Loeb House, Inc. - Pearl River	
Long Island Center for Independent Living - Hempstead	

## MEMBERSHIP *and* BENEFITS

Welcome New  
CCSNYS Members **26**

*Membership Spotlight:*  
Baby Buggy, Inc. **27**



## “Member Spotlight”

**Baby Buggy, Inc. | Claudia Fleming, Executive Director**  
520 Eighth Avenue, 8th Floor, New York, NY 10018  
info@babybuggy.org | (212) 736-1777

Baby Buggy is a non-profit organization dedicated to providing New York City’s families in need with essential equipment, clothing, and products for their infants and young children. Since 2001, Baby Buggy has delivered over a million essential items to thousands of families through our network of over 70 qualified social service partners. Today, over 500,000 children live in poverty in NYC. Baby Buggy’s goal is to help them access the essentials they need to ensure their safety and well-being. By providing concrete resources to their families through our network of social service professionals, we help alleviate the stress of living in poverty, and we help prevent crisis.

A lot has happened over the past five years in the Baby Buggy offices. From 2001 through today the organization has created its own website (full of information and user friendly), launched it’s first newsletter, has grown to serve more than 70 social services organizations and their clients, solicited more than \$1.5 million in donor and corporate contributions, conducted a wildly successful Diaper Drive, raising over 1,500,000 diapers for New York City families and much more. The heart of Baby Buggy is apparent as you step through it’s doors. You don’t expect what you are about to see. More of a warehouse than an office space, when you visit Baby Buggy, get ready for a vast sea infant and toddler clothes, cribs,

basinets, strollers and more just waiting to be going to a deserving home.

All the while Baby Buggy’s staff was growing, hiring a new Executive Director and Volunteer Coordinator. Baby Buggy has been successful in securing on-going high quality donations and recently garnered much attention and raised significant funds at their event at Lincoln Center, *A Festival of Lies*, featuring entertainment by Jerry Seinfeld.

Baby Buggy is serving as many nonprofit partners as is currently possible. They encourage people who are interested in volunteering, donating goods or contributing financial to contact them at (212) 736-1777 or email them at info@babybuggy.org.



“In 2001, shortly after the birth of my daughter, Sascha, having slowly accumulated closets full of used—but very usable—baby clothing and equipment she no longer needed, I had a moral dilemma; as the daughter of a social worker, throwing out perfectly good baby gear was unthinkable; and yet there was no easy way to get it to a family who could use it. thus, Baby Buggy was born.”

*Jessica Seinfeld, Baby Buggy Founder and Board President*



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Camp Finance 2006, to be held at Mohonk Mountain House on October 5 and 6, will feature a keynote address by nonprofit management expert **Peter Brinkerhoff**, author of the highly acclaimed books, *Mission-Based Management (Second Edition)*, *Mission-Based Management Workbook*, *Financial Empowerment*, *Mission-Based Marketing (Second Edition)* and its associated *Mission-Based Marketing Workbook*, *Faith-Based Management*, and *Social Entrepreneurship*, all published by John Wiley & Sons. His newest book, *Nonprofit Stewardship*, was released by the Amherst Wilder Foundation Press in October, 2004.

**Early Bird Registration** and additional information on our largest **Camp Finance** yet is available at online at [www.ccsnys.org](http://www.ccsnys.org) for those dedicated nonprofit volunteer leaders, staff, and others interested in hearing the most up-to-date information and receiving practical tools to help you manage your nonprofit organization. Join us in October for the most anticipated conference of its kind in New York.

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