



# UNIVERSITY HOSPITAL

Newark, New Jersey

## UNIVERSITY HOSPITAL POLICY

<b>SUBJECT:</b>	ETHICS AND COMPLIANCE	<b>TITLE:</b>	REPORTING COMPLIANCE, ETHICS CONCERNS AND FRAUD, WASTE AND ABUSE PROTECTION; AND FEDERAL DEFICIT REDUCTION		
<b>CODING:</b>	831-200-962	<b>ADOPTED:</b>	November 2015	<b>AMENDED/ REVIEWED:</b>	February 2016

### I. POLICY

University Hospital (UH) has established, and shall continue to maintain, effective and confidential means for individuals to report allegations or concerns that include actual or suspected violations of law, violations of UH policies or procedures, or any other type of wrongful conduct. Individuals will be permitted to make such reports anonymously if they so desire, and their anonymity will be protected to the extent possible and as permitted by law. Reports of assaults or threats to people or property must be made promptly to the Department of Public Safety (973-972-4490), or to local police (dial 911). The Compliance Helpline should not be used for this purpose.

"Whistleblowers" will be protected from all forms of retaliation, harassment, intimidation or discrimination. Any employee found to have retaliated against another employee who reported actual or suspected wrongful conduct shall be subject to appropriate disciplinary action up to and including termination.

All investigations of allegations of wrongdoing and/or of retaliation shall occur under the direction of the Chief Compliance Officer. To ensure neutrality and independence, the Chief Compliance Officer will report investigations to the Audit Committee of the Board of Directors and the President/CEO.

It is the responsibility of all employees of UH to report actual or suspected violations. Reports may be made through the Compliance Helpline (855-431-9966 or Website) or directly in person to the Chief Compliance Officer, or General Counsel; or to appropriate federal and/or state authorities. UH will promptly take action to investigate the allegations and will keep the information as confidential as possible. Additionally, all employees are required to cooperate with officials conducting investigations pursuant to this policy. General outcomes of the investigation will be made available to the individual making the report.

In order to maintain the integrity of this process, the Chief Compliance Officer in collaboration with Human Resources may initiate a subsequent inquiry where there is evidence that an employee intentionally made a false, frivolous or bad faith report, there was intent to harass the subject; and, where the allegation was clearly not substantiated by the facts. The making of such false, frivolous, or bad faith reports by an employee is contrary to the intent and spirit of this policy, and may subject the reporter to disciplinary action.

### II. PURPOSE

University Hospital (UH) is committed to the prevention and detection of fraud, waste, and abuse related to all aspects of the operation of UH, including all UH federal and state healthcare programs and protection for those who report actual or suspected wrongdoing as well as sanctions for those who forward false information.

UH is also committed to the highest possible standards of ethical and business conduct and to the proposition not only that employees have a responsibility to report actual or suspected wrongful conduct but also that they should be able to do so without fear of reprisal. Such reports shall be accepted willingly, kept confidential to the extent possible in conformance with applicable laws, regulations and other procedures, and addressed promptly and appropriately.

Consistent with UH's commitments, this policy is intended to formalize and enhance existing procedures for reporting allegations of wrongful conduct.

This policy is to satisfy the requirements of the Deficit Reduction Act of 2005 (DRA), particularly Section 6032, by providing information about federal and state laws relating to liability for false claims and statements.

### III. ACCOUNTABILITY

Under the direction of the President/CEO, General Counsel and the Chief Compliance Officer shall be responsible for ensuring compliance and the implementation of this policy.

### IV. APPLICABILITY

This policy shall apply to all employees of UH as defined below.

### V. DEFINITIONS

- A. **Abuse:** Incidents or practices of providers that are inconsistent with sound medical practice and may result in unnecessary costs, improper payment, or the payment for services that either fail to meet professionally recognized standards of care or are medically unnecessary.
- B. **Adverse Employment Action:** Adverse employment action includes, but is not limited to, demotion, paid or unpaid administrative leave, termination, layoff, reduction of job and/or responsibilities, transfer to a lesser position, denial of promotions, denial of compensation or benefits, other significant adverse changes in terms or conditions of employment as a result of an employee's report of wrongful conduct.
- C. **Contractor or agent:** Includes any contractor, subcontractor, agent, or other person including, but not limited to those which or who, on behalf of UH furnishes, or otherwise authorizes the furnishing of, Medicaid health care items or services, performs billing or coding functions, or is invoiced in the monitoring of health care provided by the entity.
- D. **Employee:** Any officer or employee, agent or, for the purposes of this policy, contractors and subcontractors when performing functions under the authority of, or acting on behalf of UH.
- E. **Compliance Helpline:** A confidential and independent mechanism for making reports of wrongful conduct or making other communications seeking ethics or compliance guidance from the Office of Compliance, Privacy & Ethics. The Compliance Helpline is available 24 hours a day/7days a week, via a toll free phone number, 855-431-9966 or via a secure Website.
- F. **Fraud:** The intentional deception or misrepresentation that an individual knows to be false, or does not believe to be true, and makes, knowing that the deception could result in an unauthorized benefit to himself/herself or another person or entity.
- G. **Good Faith:** As applied to a whistleblower or a witness, a belief in the truth of one's allegations which a reasonable person in the complainant's or witness's position would have, based on the information known to the complainant or witness at the time and made without malice or consideration of personal benefit. An allegation is not in good faith or is made in bad faith if the complainant knew or had reason to know it was false, or if the allegation was made with reckless disregard for or willful ignorance of information that would negate the allegation.

- H. **Other Sanctions:** In addition to other laws, penalties and fines, the Federal Program and Civil Remedies Act of 1986 provides the Department of Health and Human Services (HHS) with the authority to impose remedial action or administrative sanctions against individuals who consistently fail to comply with Medicare law or are deemed abusive to federally-funded program including the Medicare program. Sanctions include:
1. Penalties
  2. Provider education and warning
  3. Revocation of assignment privileges
  4. Withholding of the provider's Medicare payments and recover of Medicare's overpayments
  5. Exclusion of the provider from the Medicare program and posting of the provider's name on a national Sanctioned Provider list that is sponsored by the U.S. Government.
- I. **Protected Disclosure:** Any communication that discloses or demonstrates an intent to disclose information that may evidence either (1) an instance of wrongful conduct, or (2) a condition that may significantly threaten the health or safety of employees or the public if the disclosure or intention to disclose was made for the purpose of remedying that condition. Protected disclosures shall be presumed to have been made in good faith.
- J. **Retaliation:** Inappropriate or unwarranted adverse employment actions, harassment, intimidation or discrimination threatened or imposed on an employee that is related to the employee having made a protected disclosure or having refused to obey an illegal order or an order that violates any UH policy.
- K. **Whistleblower or Qui Tam Relator:** Individual who reports Wrongful Conduct, defined above.
- L. **Whistleblower Protection and Anti-Discrimination:** Includes in addition to other rights and remedies stated herein and in federal and state statutes to an employee who is discharged, demoted, suspended, threatened, harassed, or discriminated against in terms and conditions of employment because of lawful acts in furtherance of an action under the False Claims Act to bring an action in Federal District Court seeking reinstatement, back pay plus penalties and interest, and other enumerated costs, damages, and fees.
- M. **Wrongful Conduct:** Any activity undertaken by an employee in the performance of the employee's duties or in the scope of his or her employment, that violates any UH policy or violates any state or federal law or regulation, including, but not limited to, corruption, malfeasance, bribery, theft or misuse of UH property or services, fraud, abuse, or willful omission to perform duty, except for research misconduct, which is addressed in the UH Policy Name/#: TBD (Research Misconduct).

VI. **SUMMARIES OF FEDERAL AND STATE LAWS AS REQUIRED BY SECTION 6032 OF THE DRA:** Following are summaries of civil and criminal statutes enacted by the Federal Government and by the State of New Jersey which provide penalties for claims of false or fraudulent claims and broad investigative authority for federal and state authorities:

- A. **Federal Civil False Claims Act** (31 U.S.C. §3729 et seq.) This statute imposes civil liability on any person who:
- knowingly presents, or causes to be presented, a false or fraudulent claim, record or statement for payment or approval,
  - conspires to defraud the government by getting a false or fraudulent claim allowed or paid,
  - uses a false record or statement to avoid or decrease an obligation to pay the Government, and other fraudulent acts enumerated in the statute.

The definition of "knowingly" in the civil False Claims Act ("FCA") includes actual knowledge as well as acts in deliberate ignorance, or in reckless disregard, of the truth or falsity of the information. No proof of specific intent to defraud is required.

The term "claim" includes a request or demand for any portion of money or property provided by the Federal Government.

Potential civil liability includes penalties of between \$5,500 and \$11,000 per claim, treble damages, and the costs of any civil action brought to recover such penalties or damages.

The Attorney General of the United States is required to investigate violations of the FCA, and may file a suit to enforce the FCA. Before filing suit the Attorney General may seek the production of documents and written answers and oral testimony pursuant to an investigative demand or demands.

Private persons may also bring actions under the FCA (qui tam lawsuits) in the name of the government for violations of the FCA. When the action is filed it remains under seal for at least sixty days to provide the United States Government the opportunity to intervene in the lawsuit and prosecute, dismiss or settle the action. If the Government does not intervene, the private party who sued may proceed with the action.

If the government proceeds, the qui tam plaintiff may receive fifteen to twenty-five percent of the proceeds of a judgment or settlement.

If the qui tam plaintiff proceeds, the plaintiff may receive twenty-five to thirty percent of the recovery. In addition, recovery of reasonable attorneys' fees and costs may be ordered.

If the civil action is frivolous, vexatious, or brought to harass, the plaintiff may be ordered to pay the defendant's fees and costs. If found guilty of a crime associated with the violation, the plaintiff is not entitled to any recovery.

- B. **Federal Program Fraud Civil Remedies Act of 1986** (38 U.S.C. §380 et seq.). This statute establishes an administrative remedy against a person who presents, or causes to be presented, a claim or written statement that the person knows or has reason to know is false, fictitious, or fraudulent.

The term "knows or has reason to know" includes actual knowledge as well as acts in deliberate ignorance, or reckless disregard, of the truth or falsity of the information. No proof of specific intent to defraud is required.

The term "claim" includes any request or demand for any money or property provided by the Federal Government.

The appropriate federal department may investigate and, with the Attorney General's approval, may initiate a recovery proceeding if the claim is less than one hundred and fifty thousand dollars. In addition, civil monetary sanctions may be imposed in administrative hearings, through an assessment, in lieu of damages, of twice the amount of the original claim.

- C. **The New Jersey Medical Assistance and Health Services Act** (NJSA 30:4D-17(1)-(d)). The criminal provisions of this statute (MAHA) allow the imposition of penalties of \$10,000, and imprisonment of up to 3 years or both, upon a recipient or a provider who is convicted for willfully receiving monies to which he or she was not entitled.

The civil provisions of MAHA (NJSA 30:4D-17(e) - (i)) allow: interest on the amounts of excess benefits or payments made; payment of up to three times the amount of excess benefits or payments received; and payment of \$2000 for each excessive claim for assistance, benefits or payments.

- D. **The New Jersey Health Care Claims Fraud Act** (NJSA 2C:21-4.2 and 4.3; NJSA 2C:51-5). This statute provides for the automatic permanent forfeiture of health care licenses for persons convicted of health care claims fraud for crimes of the second degree, and a one-year suspension for those convicted of health care claims fraud for crimes of the third degree. One can also be imprisoned up to 10 years for fraudulent claims submitted for professional services as well as required to pay fines up to 5 times the amount of the fraudulent claim.
- E. **The New Jersey False Claims Act**  
This statute amends the New Jersey Medicaid Statute, (NJSA 30:4D-17(e), and authorizes the Attorney General and/or whistleblowers to pursue false claims litigation similar to what is authorized under the Federal False Claims Act. The statute also imposes civil liability under NJSA 30:4D-17(3) for violations. In addition, the statute amends the New Jersey Medicaid Statute to increase the limits of false claim civil penalties under NJSA 30:4D-17(e)(3) to the same level provided for under the Federal False Claims Act. Penalties under the federal statute are currently between \$5,500 and \$11,000 per false claim.
- F. **The New Jersey Conscientious Employee Protection Act** (NJSA 34:19-1 et seq.)  
Under this statute, an employee is protected from retaliation in his/her employment if he/she: (1) Disclosed, or threatened to disclose, to a supervisor or public body an activity, policy or practice of the employer, or of another employer with whom there is a business relationship, that the employee reasonably believed to be in violation of a law, or a rule or regulation issued under the law or (2) Provided information or testimony to a public body conducting an investigation, hearing or inquiry into any violation of law, or a rule or regulation issued under the law by the employer or another employer, with whom there is a business relationship or (3) Objected to or refused to participate in any activity, policy or practice which the employee reasonably believed: (a) is in violation of a law, or a rule or regulation issued under the law; (b) is fraudulent or criminal; or (c) is incompatible with a clear mandate of public policy concerning the public health, safety and welfare or protection of the environment.

## VII. RETALIATION

### Reporting and Investigating Retaliation Allegations:

1. Reporting: Anyone who has provided information who believes he or she is the subject of retaliation should report the facts supporting the allegations of retaliation to any of the following individuals or entities:
  - a. Chief Compliance Officer
  - b. The General Counsel;
  - c. Human Resources/Labor Relations
2. Investigating:
  - a. The person to whom the complaint is made will immediately notify the Office of Compliance Privacy & Ethics. The Chief Compliance Officer in consultation with General Counsel will determine the appropriate investigative action, which may include internally investigating the retaliation allegation or referring the matter to external investigators, if necessary.

All retaliation investigations will be conducted as sensitively and expeditiously as possible. Due consideration will also be given to existing grievance procedures under applicable collective bargaining agreements.

- b. Should an investigation conclude that retaliation has been substantiated; the individual(s) responsible for committing the retaliation, in addition to any civil or criminal proceedings, shall be subject to disciplinary action up to and including termination.
- c. Monitoring and tracking of whistleblower complaints will occur via a secure Office of Compliance Privacy & Ethics database compilation of the names of employees who can be considered whistleblowers, the names of other employees with information about the whistleblower allegations and the names of employees who are the targets or subjects of the whistleblower allegations.
- d. All employees of UH are responsible for creating and enhancing a workplace atmosphere that encourages employees to report their concerns, free of intimidation or harassment. UH will not tolerate any acts of retaliation against employees who report acts of wrongful conduct. The procedures outlined above will apply to any act of retaliation committed against any employee making a good faith report of actual or suspected wrongful conduct.
- e. All employees of UH, are responsible to ensure that their activities on behalf of UH, and those of their colleagues, comply with all applicable laws and UH policies, as well as with all relevant federal and state laws, and UH policies and that they have familiarized themselves with the laws, regulations and UH policies that affect their workplace activities.

#### VIII. REVIEW COMMITTEE (RC)

- A. The Committee shall review any proposed serious adverse employment action before it is taken against UH employees, whether for disciplinary or other reasons for the purpose of determining whether it could be considered an act of retaliation or has the potential to be an act of retaliation in instances where the employee:
  - 1. has provided information to initiate a pending investigation of a wrongful conduct allegation;
  - 2. has made a past allegation of wrongful conduct;
  - 3. is a party to any civil, criminal or administrative proceeding, or
  - 4. is a witness or interviewee in (a) - (c) above, against UH and/or its trustees, employees, or associated persons.

If there is no record or evidence of any of these factors, prior to or concurrent with the adverse action, RC review will not be necessary.
- B. The membership of the RC shall consist of
  - 1. The Chief Compliance Officer, or a designee, who shall serve as chair of this RC;
  - 2. Human Resources/Labor Relations; and
  - 3. General Counsel or designee.
- C. Notice of a proposed adverse employment action in the instances noted above will be provided directly, or through Human Resources, to the Office of Compliance, Privacy and Ethics and to General Counsel with the name of the employee against whom the adverse action is contemplated. If it is believed that the contemplated action constitutes an adverse employment action, the matter shall be referred to the RC for consideration as to whether the proposed adverse employment action is appropriate and whether either is, or has the potential to be, an act of retaliation. If the

RC makes such a determination, it will then consult with the General Counsel to determine whether the intended adverse employment action should and will be implemented.

- D. In extraordinary or emergency situations where an employee puts the safety and health of an UH employee at risk or threatens the continued effective management of operations of the UH, the Chief Compliance Officer and the General Counsel, in consultation with Human Resources, shall have the authority to immediately place that employee on paid or unpaid administrative leave pending a review by the RC at its next meeting.

Disciplinary matters related to Board of Directors, are governed by NJSA 18A:64G-6.1 et seq. Each voting member of the Board may be removed from office by the Governor, for cause, after a public hearing.

The Chief Compliance Officer will provide periodic reports to the Audit Committee of the Board of Directors on the number of reported allegations of retaliation, the results of retaliation investigations, and the results of RC determinations.

## IX. TRAINING AND AWARENESS

- A. It is the responsibility of the Senior Leadership including President/CEO, Chief Medical Officer, Chief Nursing Officer, Chief Compliance Officer to ensure that all Department Heads are educated and understand the rights and responsibilities of all employees in reporting Wrongful Conduct or suspected Wrongful Conduct.

It is the responsibility of all Department Heads to maintain an ethical working climate. Every Department Head must:

1. explain to their respective employees the importance of complying with this policy;
2. encourage discussion of business practice standards and situations;
3. respond promptly and properly to concerns raised by employees; and
4. protect employees against reprisals and retaliation when the employees report, in good faith, actions they believe are a violation or suspected violation of law, UH policy or procedure, or any other type of wrongful conduct.

The Office of Compliance, Privacy & Ethics will include education on these rights and responsibilities in the annual mandatory compliance training. Successful completion of this training by the UH workforce is mandatory and a condition of employment.

- B. The Office of Compliance, Privacy & Ethics will ensure that:

1. The screening of UH employees against the OIG, GSA, and Medicaid Fraud Exclusion databases (collectively Databases) before hiring employees or retaining vendors or contractors and periodically checks the Databases during the term of employment or agreement.
2. All employees are provided with this policy, and that the policy will be available on the UH website.
3. Information related to the federal Deficit Reduction Act of 2005 will be incorporated into the UH Orientation.
4. Compliance training will be provided annually to the UH employees, and included in the education will be information regarding the Deficit Reduction Act of 2005 requirements.

- C. Supply Chain Management will:

1. Provide information regarding the role and responsibilities of contractors and agents relating to the federal Deficit Reduction Act of 2005 to all contractors and agents of UH.
2. Supply all appropriate contractors and agents with this policy.

X. SANCTIONS

Failure to comply with this policy may result in sanctions up to, and including, termination of employment or termination of a contractor's contract.