

**REPORTING COMPLIANCE, ETHICS CONCERNS AND FRAUD, WASTE AND ABUSE PROTECTION;
AND FEDERAL DEFICIT REDUCTION** **January 2021**

DOCUMENT INFORMATION

Policy Title:	REPORTING COMPLIANCE, ETHICS CONCERNS AND FRAUD, WASTE AND ABUSE PROTECTION; AND FEDERAL DEFICIT REDUCTION
Department/Manual:	ETHICS AND COMPLIANCE
Issue Number:	831-200-962
Date Issued:	November 2015
Date Reviewed/Revised:	February 2016; February 2018, February 2019, January 2021
Supersedes:	
Approved By:	Danette Slevinski, Chief Compliance and Privacy Officer

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.

UH protects "Whistleblowers" who bring forward good faith reports of potential 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.

It is the responsibility of all employees of UH to report actual or suspected violations and wrongful conduct. Reports pertaining to workplace conduct matters including fairness in the workplace, harassment and discrimination should be made through the Chain of Command within the employee's department or the Labor Relations/ Human Resources department. Matters referred to the Office of Ethics and Compliance on the Compliance Helpline, pertaining to workplace conduct matters are generally referred to departmental leadership or Labor Relations/ Human resources. Questions about or potential HIPAA Privacy, Corporate Compliance or New Jersey Uniform Ethics Code violations should be referred to the Compliance Helpline (855-431-9966 or on the Ethics and Compliance Departmental Website) or directly in person to the Chief Compliance Officer. UH will promptly take action to investigate the allegations confidentially to the extent permitted by law. Additionally, all employees are required to cooperate with UH staff conducting investigations pursuant to this policy.

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In order to maintain the integrity of this process, the Chief Compliance Officer in collaboration with Labor Relations/ 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 up to and including termination.

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 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 actual or suspected violations and wrongful conduct.

In addition, this policy satisfies 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, the 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, 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.
- 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

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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 alleged HIPAA Privacy, Corporate Compliance or New Jersey Uniform Ethics Code violations, or making other communications seeking ethics or compliance guidance from the Office of Ethics and Compliance. The Compliance Helpline is available 24 hours a day/7days a week, via a toll free phone number, 855-431-9966 or via the Office of Ethics and Compliance Departmental 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 Fraud Civil Remedies Act provides the US 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

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employee having made a protected disclosure or having refused to obey an illegal order or an order that violates a 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 subjected to adverse action, 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 shall be addressed.

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 False Claims Act** (31 U.S.C. §3729-3733 et seq.) The Act establishes liability when any person or entity improperly receives from or avoids payment to the Federal government--tax fraud excepted. In summary, the Act prohibits:
 - 1. Knowingly presenting, or causing to be presented to the Government a false claim for payment;
 - 2. Knowingly making, using, or causing to be made or used, a false record or statement to get a false claim paid or approved by the government;
 - 3. Conspiring to defraud the Government by getting a false claim allowed or paid;
 - 4. Falsely certifying the type or amount of property to be used by the Government;
 - 5. Certifying receipt of property on a document without completely knowing that the information is true;
 - 6. Knowingly buying Government property from an unauthorized officer of the Government, and;

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7. Knowingly making, using, or causing to be made or used a false record to avoid, or decrease an obligation to pay or transmit property to the Government.

Any individual or entity engaging in any of the seven categories of prohibited actions listed in 31 U.S.C. 3729(a), including the submission of false claims to federally-funded health care programs, shall, for penalties assessed after February 3, 2017, be liable for a civil penalty which currently is not less than \$10,957 and not more than \$21,916 per false claim, plus three times the amount of damages sustained by the federal government.¹ The amount of the false claims penalty is to be adjusted periodically for inflation in accordance with a federal formula.

The U.S. Attorney General may bring an action under this law. In addition, the law provides that any “whistleblower” may bring an action under this act on his own behalf and for the United States Government. These actions, which must be filed in U.S. District Court, are known as “qui tam” actions. The Government, after reviewing the complaint and supporting evidence, may decide either to take over the action, or decline to do so, in which case the whistleblower may conduct the action. If either the Government or the whistleblower is successful, the whistleblower is entitled to receive a percentage of the recovery. If prosecuted by the federal government, these qui tam actions are generally handled by the various U.S. Attorney’s Offices, or by the U.S. Justice Department.

- B. **Federal Program Fraud Civil Remedies Act of 1986** (31 U.S.C. §3801-3812). This statute provides federal administrative remedies for false claims and statements, including those made to federally funded health care programs. Current civil penalties are \$10,957² for each false claim or statement, and an assessment in lieu of damages sustained by the federal government of up to double damages for each false assessment in lieu of damages sustained by the federal government of up to double damages for each false in accordance with a federal formula.

- C. **The New Jersey Medical Assistance and Health Services Act** (NJS 30:4D-17(a)-(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 (NJS 30:4D-7.h.; NJS 30:4D-17(e) – (i); NJS 30:4D-17.1.a.) 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 \$5,500 to \$11,000 (increased from \$2,000) for each excessive claim for assistance, benefits or payments.

¹ Penalties for violations of the Federal False Claims Act and the Program Fraud Civil Remedies Act are subject to revision.

² See footnote 1.

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- D. **The New Jersey Health Care Claims Fraud Act** (NJS. 2C:21-4.2 & 4.3; NJS 2C:51-5). Provides the following criminal penalties for health care claims fraud, including the submission of false claims to programs funded in whole or in part with state funds:
1. A practitioner who knowingly commits health care claims fraud in the course of providing professional services is guilty of a crime of the second degree, and is subject to a fine of up to 5 times the monetary benefits obtained or sought to be obtained and to permanent forfeiture of his license;
 2. A practitioner who recklessly commits health care claims fraud in the course of providing professional services is guilty of a crime of the third degree, and is subject to a fine of up to 5 times the pecuniary benefit obtained or sought to be obtained and the suspension of his license for up to 1 year;
 3. A person who is not a practitioner subject to paragraph a. or b. above (for example, someone who is not licensed, registered or certified by an appropriate State agency as a health care professional) is guilty of a crime of the third degree if that person knowingly commits health care claims fraud. Such a person is guilty of a crime of the second degree if that person knowingly commits 5 or more acts of health care claims fraud, and the aggregate monetary benefit obtained or sought to be obtained is at least \$1,000. In addition to all other criminal penalties allowed by law, such a person may be subject to a fine of up to 5 times the monetary benefit obtained or sought to be obtained;
 4. A person who is not a practitioner subject to paragraph a. or b. above is guilty of a crime of the fourth degree if that person recklessly commits health care claims fraud. In addition to all other criminal penalties allowed by law, such a person may be subject to a fine of up to 5 times the monetary benefit obtained or sought to be obtained.
- E. **The New Jersey False Claims Act NJS 2A:32C-1 et seq.** The New Jersey False Claims Act (NJFCA) was enacted in January, 2008 and became effective in March 2008. It has similar provisions to the federal False Claims Act. For example, The Attorney General may bring an action against an individual or entity that makes a false claim. In addition, the NJFCA also allows for individuals to bring a private right of action in the name of the State against wrongdoers and be able to collect a penalty from those wrongdoers. Under the NJFCA, the civil penalties were increased from to \$2,000 per false or fraudulent claim to the federal level which is currently \$5,500 to \$11,000 per false or fraudulent claim under the NJ Medical Assistance and Health Services Act.³

The NJFCA provides that a person will be liable for the same penalties as under the federal False Claims Act but to the State of NJ if that person:

³ These penalty amounts may be adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

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1. Knowingly presents or causes to be presented to an employee, officer or agent of the State, or to any contractor, grantee, or other recipient of State funds, a false or fraudulent claim for payment or approval;
2. Knowingly makes, uses, or causes to be made or used a false record or statement to get a false or fraudulent claim paid or approved by the State;
3. Conspires to defraud the State by getting a false or fraudulent claim allowed or paid by the State;
4. Has possession, custody, or control of public property or money used or to be used by the State and knowingly delivers or causes to be delivered less property than the amount for which the person receives a certificate or receipt;
5. Is authorized to make or deliver a document certifying receipt of property used or to be used by the State and, intending to defraud the entity, makes or delivers a receipt without completely knowing that the information on the receipt is true;
6. Knowingly buys, or receives as a pledge of an obligation or debt, public property from any person who lawfully may not sell or pledge the property; or
7. Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the State.

In addition to the above, the NJ False Claims Act has whistleblower protections within it similar to the ones under the federal False Claims Act.

- F. **The New Jersey Conscientious Employee Protection Act (NJS 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.
- G. **New Jersey Insurance Fraud Prevention Act (NJSA 17:33A-1 et seq.)**
The purpose of this act is to confront aggressively the problem of insurance fraud in NJ, by facilitating its detection and eliminating its occurrence through the development of fraud prevention programs. It requires the restitution of fraudulently obtained

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insurance benefits. Civil penalty may be up to \$5,000 for first violation, \$10,000 for second and \$15,000 for subsequent violations. It also includes a \$1,000 insurance surcharge.

Additional ways to report include contacting the following:

The New Jersey Medicaid Fraud Division at 888-937-2835 or
<https://www.nj.gov/comptroller/divisions/medicaid/complaint.html>

The New Jersey Insurance Fraud Prosecutor Hotline at 877-55-FRAUD or
<https://njinsurancefraud2.org/#report>

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:
 - a. Labor Relations/ Human Resources where the underlying complaint involved work place conduct, or
 - b. The Chief Compliance Officer where the underlying complaint involved a HIPAA Privacy, Corporate Compliance or New Jersey Uniform Ethics Code violation.

2. Investigating:
 - a. The person to whom the complaint is made will immediately notify the Chief Human Resources Officer. Where the underlying matter involves a potential HIPAA Privacy, Corporate Compliance or New Jersey Uniform Ethics Code violation, the Chief Human Resources Officer who in coordination with the Chief Compliance Officer and, if necessary the 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

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- 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.
 - 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.
 - f. The Chief Compliance Officer will provide periodic reports to the Finance, Investment, Administration and Audit Committee of the Board of Directors regarding investigations handled or referred by the Office of Ethics and Compliance including investigations pertaining to retaliation.

VIII. REVIEW OF SERIOUS ADVERSE EMPLOYMENT ACTION

- A. Labor Relations/ Human Resources shall review any proposed serious adverse employment action of an employee who has claimed retaliation 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, review will not be necessary. Where the alleged retaliation occurs after an employee reports a potential HIPAA Privacy, Corporate Compliance or New Jersey Uniform Ethics Code violation, Labor Relations/ Human Resources shall contact the Chief Compliance Officer who shall participate in the review of the proposed serious adverse employment action.

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- B. 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 UH, the Labor Relations/ Human Resources policy pertaining to administrative leave will be the process for considering and placing employees on administrative leave.

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.

IX. TRAINING AND AWARENESS

- A. It is the responsibility of senior leadership in addition to the 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 Ethics and Compliance 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 Ethics and Compliance will ensure that:
1. The screening of UH employees against the OIG, GSA, and Medicaid Fraud Exclusion databases (collectively databases), as well as any other exclusion databases as outlined by the Federal or New Jersey State government is conducted before hiring employees or retaining vendors or contractors and will periodically check 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.

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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.

Document Information

Document Title

Reporting Compliance Ethics Concerns and Fraud, Waste and Abuse Protection; and Federal Deficit Reduction

Document Description

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.

Approval Information

Approved On: 01/28/2021

Approved By: Danette Slevinski (UH - Chief Compliance Officer: slevindl) on 01/28/2021

Approval Expires: 03/04/2024

Approval Type: Process

Document Location: / Ethics and Compliance

Keywords: Fraud, Waste, Abuse, Whistleblower,

Printed By: Kylie Rosado

Standard References: N/A

Note: This copy will expire in 24 hours