Compliance Program Policy and Procedure Manual

Category/Section: Compliance Program **Policy Number: CC-02**

Title: Fraud, Waste, & Abuse Prevention & Self-Disclosures

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POLICY:
Episcopal Health Services Inc. ("EHS") is committed to fostering a culture of compliant and ethical conduct. As part of that commitment, EHS will establish and maintain methods for preventing, detecting, and deterring False Claims, Fraud, Waste, and Abuse and other Non-Compliance in conformance with applicable laws and regulations.

PURPOSE:
The purpose of this policy is to support compliance with various federal and New York State ("NYS") laws and regulations pertaining to the prevention, detection, and deterrence of False Claims, Fraud, Waste, and Abuse or other Non-Compliance.

SCOPE:
This policy governs the requirements outlined herein and applies to all EHS employees, medical staff, affiliates, contractors, volunteers, students and trainees (collectively "Personnel") at all EHS owned, operated or affiliated facilities, entities and programs.

ATTACHMENTS:
None.

DEFINITIONS:
A. **Fraud:**
Means knowingly and willfully executing, or attempting to execute, a scheme or artifice to defraud any health care benefit program or to obtain (by means of false or fraudulent pretenses, representations or promises) any of the money or property owned by, or under the custody or control of, any health care benefit program.

B. **Waste:**
Means overutilization of services or other practices that, directly or indirectly, result in unnecessary costs to the health care system, including the Medicare and Medicaid programs which are not generally considered to be caused by criminally negligent actions.

C. **Abuse**:
Means payment for items or services when there is no legal entitlement to that payment and the individual or entity has not knowingly and/or intentionally misrepresented facts to obtain payment.

D. **False Claim(s):**
Means any submitted claim for payment which you know or should know is false or fraudulent or retaining such payment under the same auspices.

E. **Compliance Risk(s):**
Means, known or suspected, singular, repetitive or a pattern of risk, which may, can, does or has the potential to pose a threat to EHS' financial, organizational, or reputational standing, and which is or can result from an act of Non- Compliance, violation of laws, regulations, EHS' Code of Conduct, Compliance Program ("Compliance Program"), internal policies and procedures, best practices and/or industry standards.

F. **Non-Compliance:**
Means issues or matters related to violations of the law or Compliance Program and includes, without limitation, the following:

- Known or suspected misconduct, compliance or non-compliance issues;
- Known or suspected violations of employee or patient privacy or confidentiality;
- Known or suspected violations of any applicable law or regulation;
- Known or suspected violations of EHS' policies and procedures, the Code of Conduct or the Compliance Program;
- Potential Overpayments;
- Related risks under self or external audit, review or investigation;
- Performing or participation in internal or external investigations, reviews and audits;
- Cooperating with or implementing remedial actions in response to noted compliance issues, deficiencies or failures;
- Known or suspected fraud, waste or abuse;
- Situations covered under Labor Law §§ 740 and 741, including violations that create and/or present a substantial and specific danger to public health or safety, or that constitute healthcare fraud, or when Personnel reasonably believe a situation constitutes improper quality of patient care.

G. **Conditions of Participation:**
Means essential regulatory conditions that health care organizations such as EHS must meet in order to begin and continue participating in the Medicare and Medicaid programs.

H. **In Good Faith:**

Means reporting known or suspected non-compliant activities or participating in compliance investigations with the honest and reasonable belief Non-Compliance has occurred.

I. **Retaliation or Intimidation:**
Means an adverse action taken against an individual or entity as a direct result of that individual's participation in the EHS Compliance Program. Actions generally include, but are not limited to, the inappropriate discharge, suspension, or demotion of an individual or any threatening, discriminatory, or other adverse action taken against an individual or entity in the terms and conditions of such employment, contractual or other affiliation arrangement with EHS.

J. **Whistleblower:**
Means Personnel or other individuals or entities that know or have reason to suspect Non-Compliance has occurred and who In Good Faith participates in the Compliance Program.

K. **Federal Healthcare Program:**
Means any plan or program providing healthcare benefits, whether directly through insurance or otherwise that is funded directly, in whole or part, by the United States Government.

L. **Overpayment:**
Means any funds that a person or entity receives or retains under a Federal Healthcare Program when that person or entity, after applicable reconciliation, is not entitled to those funds.

M. **Self-Disclosure:**
Means a process to enable providers of services and suppliers, including EHS, and to self-disclose and report actual or potential violations of the law and/or the identification of an Overpayment.

RESPONSIBILITIES:

1. **Compliance and Privacy Department:**
In collaboration with other departments, Compliance & Privacy is responsible for evaluating and monitoring compliance with statutory and regulatory requirements concerning False Claims, Fraud, Waste and Abuse and other Non-Compliance.

2. **Personnel:**
Are responsible for performing their job functions in compliance with this policy. Failure to maintain such compliance may result in disciplinary action up to and including termination of employment, contractual or other affiliation relationship with EHS.

PROCEDURES/GUIDELINES:

General Obligations and Processes

1. EHS has established effective internal controls and systems in order to prevent, detect, and deter potential False Claims, Fraud, Waste and Abuse through the following activities:
    - Assessing, prioritizing, and mitigating Compliance Risks on a routine and recurring basis;

- Developing an annual compliance work-plan designed to evaluate potential Compliance Risks;
- Maintaining a system for reporting compliance concerns or violations including those related to potential Fraud, Waste and Abuse or False Claims;
- Investigating False Claims, Fraud, Waste and Abuse matters, and other compliance violations or allegations;
- Developing and enforcing of EHS' Code of Conduct;
- Providing Personnel and other individuals or entities, as deemed necessary, with training and education, including information on the Compliance Program, EHS' Code of Conduct, and federal and NYS Fraud, Waste and Abuse laws; and
- Exercising due diligence and action, where applicable, as it applies to situations including:
    - Fraud, Waste and Abuse;
    - False Claims;
    - Intentional or reckless violations, or attempted violations, of Fraud, Waste, and Abuse laws;
    - Falsification of EHS records including, without limitation, medical records, billing records, employment records and financial records;
    - Refusal to cooperate honestly and fully with a compliance investigation or other review, or otherwise interfere with an internal or external investigation or audit;
    - Violations of EHS' Whistleblower protection policies; and
    - Potential or actual conflicts of interest.

2. EHS is committed to the following, among other things:
    - Providing appropriate and medically necessary care;
    - Completing accurate and timely (contemporaneous) documentation;
    - Appropriately coding and billing for services and maintaining truthful cost reports;
    - Preventing the submission of, or retaining of payment for any False Claims; and
    - Ensuring the privacy, confidentiality and security of patient information and other confidential business information.

Code of Conduct

1. The EHS Code of Conduct provides guidance to all Personnel, and where applicable to members of the EHS Board of Trustees, to assist them in carrying out daily activities within appropriate ethical and legal standards and in accordance with the EHS Mission and Values.

2. Personnel may encounter situations where the right course of action is unclear. While no single document can address every issue, Personnel should use the EHS Code of Conduct and other EHS policies, along with their own reasonable judgment as guidance. If Personnel are unsure or uncomfortable in any way, they are expected to reach out to their supervisor or administration.

3. Personnel are expected to fully comply with the EHS Code of Conduct, as well as all other EHS policies and procedures, and to exhibit the highest professional ethics while carrying out their role or function. Personnel who are made aware of a situation or issue that violates the EHS Code of Conduct, EHS policies, or the law are obligated to report their concerns immediately through the appropriate methods, as outlined in this document.

4. Those associated or affiliated with EHS (non-Personnel) are also expected to comply with any applicable sections of EHS' Code of Conduct. Failure to do so, including any reckless or purposeful and egregious conduct, will result in termination of contract or affiliation with any individual or entity.

Compliance Program

1. EHS maintains an effective Compliance Program, as required under federal and NYS law, which includes policies and procedures designed to prevent, detect, deter, and mitigate any Fraud, Waste, and Abuse.

2. The Compliance Program is designed to focus on areas of Fraud, Waste, and Abuse prevention and detection, including without limitation:
   - Financial transactions;
   - Billing, coding, and claims submissions;
   - Claims reimbursement and payments;
   - Cost reporting;
   - Governance;
   - Federal Health Care Program conditions of participation, as well as other payer requirements;
   - Information governance;
   - Contract management;
   - Credentialing; and
   - Risk identification, assessment, and prioritization as they apply to EHS.

3. EHS' development of policies and procedures related to preventing, detecting, and deterring Fraud, Waste, and Abuse and other Non-Compliance, which are supported by the Compliance Program are designed to do the following:
   - Provide for the establishment of systems to support and monitor compliance with any applicable requirements under federal, NYS, or local law, including without limitation, the obligations set forth under the Deficit Reduction Act of 2005 ("DRA") and any obligations under the New York State Office of the Medicaid Inspector General ("OMIG"), the Centers for Medicare and Medicaid Services ("CMS"), U.S. Department of Health and Human Services ("HHS"), and HHS Office of Inspector General ("OIG");
   - Ensure the dissemination of written policies and procedures that inform Personnel and other associated entities of the following:
     - The prevention and detection of Fraud, Waste, and Abuse;

- The Federal False Claims Act and any similar NYS law that governs False Claims;
- Administrative remedies for False Claims;
- NYS law pertaining to civil or criminal penalties for False Claims and statements; and;
- Applicable Whistleblower protections under federal and NYS laws.

- Provide appropriate training as required under the DRA, OMIG regulations, and OIG guidance, and any supplemental, remedial, or targeted training and education, designed to cover specific topics or issues that may present Compliance Risks, particularly those directly or indirectly related to a Federal Healthcare Program or operations of EHS;
- Guide the implementation of appropriate corrective measures, policies, and procedures and/or internal controls, consistent with federal and NYS law; and
- Ensure the Compliance and Privacy Department functions as the authorized department for EHS that oversees matters involving any federal, NYS, or other applicable state self-disclosure protocol.

Compliance Plan

1. The Compliance and Privacy Department is responsible for the development of the EHS Compliance Plan ("Compliance Plan"). The Compliance Plan is designed to do the following, without limitation:
   - Establish an administrative framework for conducting an effective and diligent compliance effort, which includes addressing plans to meet the required federal and NYS elements of an effective Compliance Program;
   - Create effective communication channels to deliver EHS' commitment to ethical business practices and receive feedback regarding adherence to these practices;
   - Outline a commitment to educate Personnel regarding compliance requirements and how to conduct their job activities in compliance with federal and NYS law and according to the policies and procedures of the Compliance Program;
   - Provide an overview of monitoring and auditing functions to measure the effectiveness of the Compliance Program and to address problems in an efficient and timely manner;
   - Outline enforcement and discipline components that ensure that all Personnel take their compliance responsibilities seriously; and
   - Identify EHS' plan to minimize Compliance Risks.

Identification and Reporting/Self-Disclosure of Overpayments

1. The Compliance and Privacy Department, in collaboration with other departments and legal counsel, when applicable, will determine, as part of the findings related to an investigation, routine audit, or review, whether self-reporting (*i.e.,* Self-Disclosure) related to a potential violation of the law, non-compliance, or identified Overpayment, is required by EHS.

2. For the purposes of this policy and EHS operations, a Self-Disclosure may generally be warranted when an Overpayment is the result of:

- Billing errors;
- Fraudulent behavior, conduct, or violations of the False Claims Act by Personnel or others;
- Discovery of an employee or other Personnel on a federal, NYS, or other state excluded provider list;
- Documentation errors;
- Changing billing systems and/or electronic medical record systems; and
- Physician Self-Referral or Anti-Kickback Statute violations.

3. For the purposes of this policy and EHS operations, a Self-Disclosure may generally not be warranted when an Overpayment is:

   - Included in another separate review or audit being conducted by a governmental entity such as OMIG, OIG, CMS or the State Attorney General, etc. In these situations, EHS is required to seek permission from the entity before voiding or adjusting claims;
   - Included in a broader state-initiated rate adjustment, cost settlement, or other payment adjustments (*e.g.,* retroactive rate adjustments, charity care, cost reporting, etc.);
   - Not in fact an Overpayment but rather an Underpayment. Any underpayments for Medicaid must be re-billed to eMedNY and claims are subject to their own rules and regulations.

4. Generally, the following information will generally be necessary for an appropriate Self- Disclosure to be made:
   - Overpayment amount;
   - A detailed explanation of the reason EHS received and identified the Overpayment, including an explanation of the circumstances that led to such;
   - Identification of any rule, policy, regulation, or statute that was suspected to be violated; Identification of the individuals involved in the error and discovery of the error;
   - The type of program affected;
   - Corrective measures put in place to prevent a recurrence;
   - Contact information;
   - Signatory and Title of the responsible person who is leading the Self-Disclosure;
   - Claims Data File or MPC Form (if applicable);
   - Confirmation that void or adjustment transactions have been processed, or agreement to return the overpayment amount within any required timeframe or approved, an agreement to executing a payment plan to repay in installments.

5. When an Overpayment has been identified, the Finance and Revenue Cycle Departments, in consultation with the Compliance and Privacy Department and legal counsel, when applicable, and in discussion with the applicable facility, unit, or subsidiary, will:
   - Gather and review the information necessary to submit a Self-Disclosure;
   - Determine the appropriate means of timely processing the repayment of the

Overpayment to the affected payer, consistent with any required timeframes;
- Determine the appropriate venue for reporting the Overpayment. Such venue may include, but not be limited to, OIG's Self-Disclosure Protocol, CMS's Self-Referral Disclosure Protocol; OMIG's Self-Disclosure Program; the U.S. Office of the Attorney General, or third party payer's requirements or policies as governed by contract;
- Retain records and documentation of any reported and/or refunded Overpayments; and
- Implement internal controls and practices consistent to prevent any future Overpayments, as deemed necessary.

6. Generally, Overpayments identified by EHS shall be reported and returned within sixty (60) days of identification, as required under applicable law or contract with payers, unless protocols of the reporting mechanism allow for a variance.

7. EHS' Compliance Officer will complete and sign any attestations or similar documents that may be required under any Self-Disclosure Protocol. Such documentation shall accompany reporting of Overpayments, as required.

Reporting, Whistleblower Protection and Non-Retaliation/Intimidation

1. Personnel or other individuals or entities may report any suspected Non-Compliance or other issues outlined in this policy as follows:
   - By phone at (718) 869-5711;
   - By email at compliance@ehs.org;
   - Via the 24/7 Confidential & Anonymous Compliance Hotline by calling 1-844-973-0162 or visiting www.ehs.ethicspoint.com;
   - By mail at St. John's Episcopal Hospital, 327 Beach 19th Street, Far Rockaway, NY 11691. Attn: Compliance & Privacy.

   Note: If you suspect Medicare fraud or that which involves a health plan, you can also contact the health plan sponsor directly or contact the OIG at 1-800-HHS-TIPS.

2. EHS strictly prohibits Intimidation, harassment or Retaliation, in any form, against any individual or entity who In Good Faith participates in the EHS Compliance Program by reporting or participating in the investigation of any known or suspected violations of law, privacy, EHS policies and procedures, potential Fraud, Waste and Abuse or other Non-Compliance. Any attempt to retaliate against or intimidate an individual or entity who participates in the EHS Compliance Program will result in action up to and including termination of employment, contract, or affiliation with EHS.

RELEVANT REFERENCES:

1. NYS SSL § 363-d.
2. 18 NYCRR §§ 521.1 and 521.3.
3. Pub. L. §§ 111-148.
4. Deficit Reduction Act of 2005 (Pub. L. 109-171) §§ 6032 and 6042.
5. 18 USC § 1347.
6. 42 USC §§ 1320a-7a and b.

7. 42 USC §1395nn.
8. 31 USC §§ 3729-3733.
9. 45 CFR §§ 160.316 and 164.530.
10. 42 CFR § §401.305 and 411.362.
11. 18 NYCRR §§ 504 and 521.
12. NYS Finance Law §§ 187-194.
13. NYS Penal Law §§ 175, 176 and 177.
14. NYS Social Services Law §§ 363-b and 145-b.
15. U.S. Department of Health and Human Services Office of Inspector General "*Publication of the OIG Compliance Program Guidance for Hospitals"*, 63 Fed. Reg. 35, 8987, 8996 (Feb. 23, 1998).
16. U.S. Department of Health and Human Services Office of Inspector General *"Supplemental Compliance Guidance for Hospitals"*, 70 Fed. Reg. 4858 (Jan. 31, 2005).
17. U.S. Department of Health and Human Services Office of Inspector General "*General Compliance Program Guidance*", (Nov. 6, 2023).
18. Centers for Medicare and Medicaid Services, *Medicare Managed Care Manual Chapter 21 – Compliance Program Guidelines and Prescription Drug Benefit Manual Chapter 9 – Compliance Program Guidelines*, § 50.6.
19. NYS Office of the Medicaid Inspector General, "Self-Disclosure Program Requirements, Instructions and Guidelines, January 2023" available at file:///C:/Users/frc1003/Downloads/Self-Disclosure%20Program%20Requirements_0.pdf, accessed March 1, 2023.

RELATED POLICIES:

EHS Code of Conduct
CC-03: Conflicts of Interest
CC-04: Auditing, Monitoring, and Identification of Compliance Risks
CC-05: Whistleblower and Non-Retaliation/Intimidation
CC-06: Compliance Investigations
CC-07: Exclusions and Sanctions Screening
CC-10: Records Management Program

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LIST OF REVISIONS:

Revision No.	Date of Change	Additions/Amendments
1	06/01/2015	Updated to reflect change in regulations
2	01/03/2020	Updated policy format
3	03/15/2021	Revised policy language, content and format
4	01/01/2022	Updated format
5	04/01/2023	Revised in accordance with updated regulations.
6	01/01/2024	Updated owner's title
7	03/28/2024	Updated to new EHS Logo
8	05/28/2024	Annual review. Policy standardization. Revised general obligations and requirements to make consistent with current regulations and guidelines.

TITLE, POLICY OWNER:
Assistant Director, Compliance

RECOMMENDED/APPROVED BY:
Chief Compliance & Privacy Officer

DISTRIBUTION:
☑ Nursing Staff
☑ Medical Staff
☑ Department Heads
☑ All Employees
☑ Other: Volunteers, Students, Contractors