

**OFFICE OF CORPORATE
COMPLIANCE**

HHC ACO, INC. COMPLIANCE PLAN

Effective Date: December 29, 2017

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I. Introduction

Overview

The New York City Health and Hospitals Corporation (“NYC Health + Hospitals” or “System”) is a public benefit corporation created under the laws of the State of New York pursuant to the New York City Health and Hospitals Corporation Act.¹ On June 12, 2012, the NYC Health + Hospitals Board of Directors, by way of resolution, approved the formation of HHC ACO Inc. (“HHC ACO”), a wholly owned subsidiary public benefit corporation, in order to establish HHC ACO as an Accountable Care Organization (“ACO”) for purposes of meeting the goals of the Medicare Shared Savings Program (“MSSP”), fulfilling HHC ACO’s mission and to provide other ACO activities.

HHC ACO Compliance Plan

The Federal MSSP regulations applicable to ACOs participating in the MSSP require such ACOs to have a compliance plan that, at a minimum, has five (5) specified elements.² This HHC ACO Compliance Plan (the “Plan” or the “Compliance Plan”) outlines how HHC ACO will satisfy these five ACO required Plan elements and other Plan elements set forth in Federal and New York State laws, regulations and guidance.³ It also explains the structural and operational elements of the HHC ACO and discusses relevant laws, regulations, policies and procedures. To the extent appropriate, HHC ACO will use the existing compliance oversight structure of NYC Health + Hospitals (which is an ACO participant under the MSSP pursuant to an agreement with HHC ACO) and other MSSP ACO participants to satisfy the Compliance Plan requirements.

New York Accountable Care Organization

HHC ACO has also applied to establish a New York Accountable Care Organization (“NYACO”) pursuant to Article 29-E of the New York Public Health Law and its implementing regulations, 10 NYCRR Part 1003.

Applicability and Updating of the HHC ACO Compliance Plan

The HHC ACO Compliance Plan applies to and governs the conduct of all ACO Personnel. ACO Personnel is defined to include the following: (i) HHC ACO Participants (as defined in 42 CFR Part 425) that have entered into Participation Agreements with

¹ See the New York City Health & Hospitals Corporation Act (L. 1969, C. 1016, eff. May 26, 1969).

² 42 CFR § 425.300; see also, 76 Fed. Reg. 67802 (Nov. 2, 2011), *Medicare Program; Medicare Shared Savings Program; Accountable Care Organizations*, Final Rule “The Office of the Inspector General has outlined industry best practices for compliance programs as well as a description of the risks of fraud and abuse that various providers may face. We suggest that providers without experience developing compliance programs review the various resources that are available from the OIG’S web site to help determine the risk of fraud and abuse in the ACO and when an activity may rise to the level of a violation that may need to be reported.” *Id.* at 67953.

³ See *United States Sentencing Guidelines Manual 2016* § 8B2.1; *OIG Supplemental Compliance Program Guidance for Hospitals* 70 FR 4858, 4874-4876 (Jan. 31, 2005); and New York Social Services Law §363-d and its implementing regulations at 18 NYCRR § 521.3.

HHC ACO and ACO Providers/Suppliers (as defined in 42 CFR Part 425); and (ii) other individuals or entities that have entered into agreements with the ACO for the performance of functions or services related to HHC ACO's activities. The Plan applies to all HHC ACO activities including MSSP ACO activities and NYACO activities, if a certificate of authority is issued by the New York State Department of Health ("DOH") authorizing HHC ACO to operate a NYACO in New York State. Such activities may include HHC ACO receiving shared savings from, or entering into other ACO arrangements with, third party payors such as Medicaid, Medicare, and commercial managed care organizations ("MCOs").

The Plan will be amended as warranted by changes in applicable laws and regulations,⁴ including any additional requirements under applicable New York State laws and regulations, if HHC ACO is authorized to operate as a NYACO. Any references in the Plan to New York State laws and regulations regarding a NYACO shall apply to ACO Personnel upon DOH issuance of a certificate of authority to HHC ACO to operate a NYACO.

II. Development of an ACO Compliance Plan

a) All ACOs, including HHC ACO, are required to establish and periodically update (to reflect changes in applicable laws) a compliance plan that encompasses several required elements. The development of a compliance plan serves the following key purposes:⁵

- Identifies and helps to prevent unlawful and unethical conduct;
- Provides a centralized source for distributing information on healthcare statutes and other program directives related to fraud, waste and abuse; and
- Fosters an environment that encourages employees and others to anonymously report potential problems.

b) The structure of an ACO's compliance plan may be determined by, among other things, the following factors:⁶

- The size of an ACO; and
- The business structure of an ACO.

c) A key policy of the HHC ACO Compliance Program is the HHC ACO Standards of Conduct ("SOC"), attached hereto as Appendix "A". The SOC was adopted by resolution of the HHC ACO Board of Directors on December 18, 2017. The SOC is applicable to all ACO Personnel. The SOC is a guide that sets forth HHC ACO's compliance expectations and commitment to comply with all Federal and State laws. It describes the ACO's

⁴ 42 CFR § 425.300(b)(2).

⁵ 76 FR 67802, 67952 (Nov. 2, 2011).

⁶ *Id.*

standards of professional conduct and efforts to prevent fraud, waste and abuse. All ACO Personnel are expected to carry out their duties and functions in a manner that is lawful and ethical. The SOC also provides mechanisms for the reporting of compliance issues to the HHC ACO Chief Compliance Officer (“CCO”).

d) Under the terms of pre-existing Affiliation Agreements⁷ or participation in the NYC Health + Hospitals led Performing Provider System (“PPS”) established as part of the Delivery System Reform Incentive Payment (“DSRIP”) program, many of the ACO Personnel are already covered by the NYC Health + Hospitals Principles of Professional Conduct (“POPC”), a guide that sets forth NYC Health + Hospitals’ compliance expectations and commitment to comply with all applicable Federal and State laws. The SOC will serve as a supplemental guidance for ACO Personnel with more specific information about MSSP compliance requirements.⁸

e) ACO Personnel, along with other NYC Health + Hospitals Workforce Members, Business Partners and Agents, receive annually a memorandum required under the Deficit Reduction Act of 2005 (“DRA Memorandum”). The DRA Memorandum provides information about NYC Health + Hospitals internal policies prohibiting fraud, waste, and abuse; the Federal False Claims Act and any similar State law that governs false claims and statements; the Federal administrative remedies for false claims and statements; any State law pertaining to civil or criminal penalties for false claims and statements; and whistleblower protections under Federal and State laws. A copy of the DRA Memorandum distributed on September 29, 2017 is attached hereto as Appendix “B”.

III. Required Elements of an Effective ACO Compliance Program

a) To constitute an effective ACO compliance program under applicable Federal ACO compliance regulations, the following five (5) elements are required:

ELEMENT # 1 - The appointment of a “designated compliance official or individual who is not legal counsel to the ACO and reports directly to the ACO governing body.”⁹

- **Note:** Attorneys can serve as compliance officers of an ACO, however, legal counsel for the ACO cannot also serve as the authorized, designated compliance officer. The legal counsel to the ACO and the compliance officer of the ACO must be different individuals.¹⁰ According to the CMS MSSP 2011 Final Rule commentary, this is necessary “in order to ensure independent and

⁷ Affiliation Agreements are the agreements whereby certain of the ACO Personnel provide professional staff of physicians and other health care personnel to NYC Health + Hospital facilities.

⁸ HHC ACO Board Members, Workforce Members, Business Partners, and Agents of HHC ACO, are also subject to NYC Health + Hospitals’ Corporate Compliance and Ethics Program, including without limitation, the POPC and related compliance policies.

⁹ 42 CFR § 425.300 (a)(1).

¹⁰ 76 FR 67802, 67952 (Nov. 2, 2011)(emphasis added).

objective legal reviews and financial analyses of the organization's compliance efforts and activities by the compliance officer."¹¹ An ACO can, however, utilize the existing organization's compliance officer, provided that the compliance officer is not legal counsel to the ACO or existing organization and reports directly to the governing body of the ACO.¹²

COMPLIANCE PLAN – The CCO of NYC Health + Hospitals is also the CCO of HHC ACO. The CCO reports to the NYC Health + Hospitals President/CEO with supplemental “dotted line” access to NYC Health + Hospitals Audit Committee of the NYC Health + Hospitals Board of Directors (the “Audit Committee”). The CCO will report to the NYC Health + Hospitals Audit Committee on ACO topics at least quarterly. The CCO will also report compliance related topics to the Chairperson of the HHC ACO Board of Directors, in both his/her capacity as the Chairperson of the HHC ACO and President/Chief Executive Officer and Governing Body Member of NYC Health + Hospitals.

ELEMENT # 2 - The development and implementation of “mechanisms for identifying and addressing compliance problems related to the ACO's operations and performance.”¹³

- **Note:** “ACOs should consider implementing a system for identifying and addressing possible violations when designing their compliance plan.”¹⁴ Potential ACO risks include failure to comply with, among other things, the following:
 - ✓ Physician self-referral prohibition;
 - ✓ Civil monetary penalties (CMP) law;
 - ✓ Federal anti-kickback statute;
 - ✓ Medicare laws and regulations relevant to ACO operations; and
 - ✓ Record retention requirements under 42 CFR § 425.314[b].

Other potential risks include the following:

- ✓ Failure to record accurate specific financial and quality measurement data;

¹¹ *Id.*

¹² See 42 CFR § 425.300(b)(1); see also, 76 Fed. Reg. 67802, 67952 (Nov. 2, 2011).

¹³ 42 CFR § 425.300(a)(2).

¹⁴ 76 FR 67802, 67953 (Nov. 2, 2011).

- ✓ Improper coding;
- ✓ Presence of beneficiary and provider complaints;
- ✓ The engagement or practice of avoiding at risk beneficiaries; and
- ✓ Failure to adhere to ACO governance requirements.

COMPLIANCE PLAN – NYC Health + Hospitals has a robust risk assessment process that seeks to identify and prioritize compliance risk areas including those that might exist at HHC ACO. This process includes review of external sources such as the OIG and OMIG annual Work Plans, various guidance materials issued by regulators and new laws and regulations. The process also includes internal sources such as interviews and surveys of subject matter experts and the results of prior audits. The identified risks go through a rigorous scoring and prioritization process the HHC ACO Compliance Committee is involved in this process. The higher risk items are included in the Office of Corporate Compliance (“OCC”) annual Work Plan for compliance risk assessment, auditing, monitoring and corrective action, if required. NYC Health + Hospitals policies and the HHC ACO agreements with participants gives the OCC, NYC Health + Hospitals Inspector General and NYC Health + Hospitals Internal Audit the right to audit the participants and their ACO Personnel to ensure all the requirements of the MSSP are met.

ELEMENT # 3 - “A method for employees or contractors of the ACO, ACO participants, ACO providers/suppliers, and other individuals or entities performing functions or services related to ACO activities to anonymously report suspected problems related to the ACO to the compliance officer.”¹⁵

- **Note:** The ACO compliance program shall be constituted in a manner that “allows for the prompt and thorough investigation of possible misconduct by ACO participants, ACO providers/suppliers, other individuals or entities performing functions or services related to ACO activities, corporate officers, managers, employees, and independent contractors, as well as early detection and reporting of violations”¹⁶ Anonymous reporting mechanisms should be available to report suspected problems related to the ACO.¹⁷

COMPLIANCE PLAN - The OCC has established several lines of communication for ACO Personnel and others to report compliance issues to the OCC, including the NYC Health + Hospitals Compliance Helpline. All allegations of compliance violations, whether received through the Helpline or elsewhere, are entered into a confidential database and tracked through the investigation and final resolution.

¹⁵ 42 CFR § 425.300(a)(3).

¹⁶ 76 FR 67802, 67953 (Nov. 2, 2011).

¹⁷ *Id.* at 67952.

Compliance problems are promptly addressed and corrective actions and internal controls are implemented to reduce the potential for reoccurrence of the problems. A similar process will be utilized with respect to allegations of HHC ACO violations.

ELEMENT # 4 - The provision of “[c]ompliance training for the ACO, the ACO participants, and the ACO providers/suppliers.”¹⁸

- **Note:** Compliance training is necessary to ensure that ACO Personnel are aware of potential compliance risks and how to report compliance concerns.¹⁹ ACO compliance training should cover the legal obligations of all ACO Personnel “with respect to the ACO’s operations and performance, as well as the requirements of the compliance program and the manner in which [the] ACO is implementing such requirements.”²⁰ A PowerPoint compliance training presentation (“PowerPoint Presentation”) regarding HHC ACO has been provided by the OCC to HHC ACO participants for training of ACO Personnel. The PowerPoint is attached hereto as Appendix “C.”

COMPLIANCE PLAN - The PowerPoint Presentation is divided into the following five sections:

1. *Introduction to HHC ACO*, which outlines HHC ACO structure, governance and leadership;
2. *HHC ACO Compliance Program Requirements and the Compliance Plan*, which outlines why the establishment of the Plan is beneficial and describes the Plan’s requirements;
3. *Medicare Shared Savings Program (“MSSP”) Overview*, which provides a summary of MSSP regulatory requirements;
4. *Fraud, Waste and Abuse & Relevant Laws*, which provides a summary of important Federal and State laws applicable to ACO’s. (See Section VII (c) above for a brief description of these laws; and
5. *Reporting ACO Compliance Issues*, which informs ACO Personnel of the ways that they can report compliance issues or concerns to NYC Health + Hospitals/ACO Office of Corporate Compliance. (See Section XIII below for information on how compliance issues can be reported).

¹⁸ 42 CFR § 425.300(a)(4).

¹⁹ 76 FR 67802, 67952 (Nov. 2, 2011).

²⁰ *Id.* at 67953.

The OCC has enrolled HHC ACO providers who are members of NYC Health + Hospitals medical staff into its computer based compliance training module. The module consists of, among other things, fraud, waste and abuse and general compliance training on ACO compliance, consistent with that outlined in the foregoing paragraphs.

Additionally, on September 28, 2017, the CCO distributed to all NYC Health + Hospitals' Workforce Members, Business Partners and Agents, including ACO Personnel, a DRA Memorandum which provided information about NYC Health + Hospitals internal policies prohibiting fraud, waste, and abuse; the Federal False Claims Act and any similar State law that governs false claims and statements; the Federal administrative remedies for false claims and statements; any State law pertaining to civil or criminal penalties for false claims and statements; and whistleblower protections under Federal and State laws.

The recipients of the DRA Memorandum were encouraged to review the many policies that NYC Health + Hospitals has implemented to: (i) deter fraud, waste and abuse, and criminal conduct; and (ii) promote ethical and professional standards and principles. These policies include NYC Health + Hospitals *Compliance Plan*, NYC Health + Hospitals *Operating Procedure 50-1 - Corporate Compliance Program*, NYC Health + Hospitals *Principles of Professional Conduct*, the *Memorandum from the NYC Health + Hospitals Chief Corporate Compliance Officer regarding CMS Medicare Parts C & D Training*, and *A Guide to Compliance at NYC Health + Hospitals*. The DRA Memorandum recipients were informed that they could access these policies through the NYC Health + Hospitals public website at: <http://www.nychealthandhospitals.org/policies-procedures> and that they could contact the NYC Health + Hospitals Office of Corporate of Corporate Compliance - by phone at (646) 458-7799 or by e-mail at COMPLIANCE@nychhc.org - to obtain copies of the same.

ELEMENT # 5: A requirement for the ACO to report “probable violations of law to an appropriate law enforcement agency.”²¹

- **Note:** The following guidance may be used to determine what violations must be reported:
 - ✓ Utilize the Medicare self-referral disclosure protocol for potential violations of the physician self-referral statute.²²
 - ✓ Utilize the Health and Human Services (“HHS”) Office of Inspector General guidance with regard to those activities that may rise to the level of a violation that may require reporting.²³

²¹ 42 CFR § 425.300(a)(5).

²² 76 FR 67802, 67953 (Nov. 2, 2011).

²³ *Id.*

- **COMPLIANCE PLAN** – As set forth in detail in § XIII, *infra*, all ACO Personnel: (i) are required to report compliance issues - - including issues that indicate the occurrence of probable violations of law - - that come to their attention; and (ii) have been provided with several different options to report the same. Where the OCC receives a report that indicates the commission of act related to HHC ACO activities that constitutes a probable violation of law, the OCC will report the same to an appropriate law enforcement agency.

Nothing stated hereinabove shall be construed to prohibit ACO Personnel or any other individual or entity from making an independent report to an appropriate law enforcement official under circumstances where such ACO Personnel, individual or entity believes that a probable violation of law has occurred with respect to the performance of HHC ACO activities.

Additional Elements of HHC ACO Compliance Plan

- b) The following are additional elements of the HHC ACO Compliance Plan:²⁴

Written Policies and Procedures – HHC ACO has written policies and procedures, including without limitation, the POPC, SOC and this Compliance Plan, which describe compliance expectations, implement the compliance program, provide compliance guidance to ACO Personnel and others, identify ways to communicate compliance issues and describe how compliance issues are investigated and resolved.²⁵

Disciplinary Policies – HHC ACO has policies, including the SOC and this Compliance Plan, to encourage good faith participation in the compliance program. These policies outline sanctions, including discipline up to and including termination of employment, contract, and/or other affiliation with HHC ACO for (i) failing to report compliance issues and/or (ii) participating in, encouraging or directing non-compliant behavior.

Non-retaliation Policy - HHC ACO strictly prohibits any form of retaliation against a person who raises a compliance issue or participates in the compliance program, as provided in New York State Labor Law §740 and §741. Any person who violates the anti-retaliation policy will be disciplined up to and including termination of employment or contract.

Updating the ACO Compliance Plan

- c) ACO Compliance Plans must: (1) satisfy applicable New York State and Federal law; and (2) be periodically updated “to reflect changes in the law and regulations.”²⁶

²⁴ The ACO Compliance Plan has adopted the principles set forth in the *United States Sentencing Guidelines Manual 2016* §8B2.1; *OIG Supplemental Compliance Program Guidance for Hospitals* 70 FR 4858, 4874-4876 (January 31, 2005); and New York Social Services Law §363-d and its implementing regulations at 18 NYCRR §521.3.

²⁵ NYC Health + Hospitals compliance policies and procedures can be found at its public website accessed at <http://www.nychealthandhospitals.org/policies-procedures/>(Last viewed 12/17).

²⁶ 42 CFR § 425.300(b)(2).

IV. Overview of MSSP Requirements

Purpose and Goal of MSSP ACOs

Pursuant to the Patient Protection and Affordable Care Act (“PPACA”), the Centers for Medicare & Medicaid Services (“CMS”) finalized the MSSP, which is a program that “helps Medicare fee-for-service providers become an ACO.”²⁷ ACOs are “groups of doctors, hospitals, and other health care providers, who come together voluntarily to give coordinated high quality care to their Medicare patients.”²⁸ “The goal of coordinated care is to ensure that patients, especially the chronically ill, get the right care at the right time, while avoiding unnecessary duplication of services and preventing medical errors.”²⁹

MSSP Shared Savings and Achievement of Quality Performance Measures

The MSSP rewards ACOs that lower their growth in health care costs while meeting performance standards.

An ACO’s share of savings is dependent on meeting the CMS specified quality performance measures for that year. CMS quality performance measures currently are divided into the following four categories:³⁰

- Patient/caregiver experience;
- Care coordination/patient safety;
- At-risk population; and
- Preventive Care.

Accuracy of ACO Data

ACO Personnel ensure that any information documented in patient records and business applications is accurate, complete and truthful, including:³¹

- Quality measure documentation; and
- Beneficiary notification tracking.

ACO Personnel Information Must Remain Updated

²⁷ See CMS Accountable Care Organizations <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ACO/index.html>. (Last visited 12/2017).

²⁸ *Id.*

²⁹ *Id.*

³⁰ See *Improving Quality of Care for Medicare Patients: Accountable Care Organizations* https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/sharedsavingsprogram/Downloads/ACO_Quality_Factsheet_ICN907407.pdf. (Last visited 12/2017).

³¹ 42 CFR § 425.302(a)(2).

ACO Personnel must keep all required job licenses, registrations and/or certifications up-to-date including their National Provider Identifier (NPI) up-to-date and must notify CMS of any changes within 30 days.³²

MSSP ACO Marketing Requirements

ACO marketing materials and activities must meet all the following requirements:³³

- Use template language developed by CMS, if available;
- Not be used in a discriminatory manner or for discriminatory purposes;
- Comply with restrictions on beneficiary inducements; and
- Not be materially inaccurate or misleading.

Notification to Beneficiaries of Participation in the MSSP

ACO Personnel must notify beneficiaries at the point of care that their MSSP ACO providers/suppliers are participating in the MSSP and of their opportunity to decline claims data sharing.³⁴ Notification is carried out when ACO Personnel post signs in facilities, and in settings in which beneficiaries receive primary care services, and by making standardized written notices available upon request.³⁵ The ACO must use template language developed by CMS.³⁶

V. Overview of NYACO Requirements

Purpose and Goal of NYACOs

Pursuant to Article 29-E of the New York State Public Health Law (“PHL”) and 10 NYCRR Part 1003, DOH created a process for entities to apply for a certificate of authority to become a NYACO.³⁷ A NYACO is defined as “an organization comprised of clinically integrated independent health care providers that work together to provide, manage, and coordinate health care (including primary care) for a defined population; with a mechanism for shared governance; the ability to negotiate, receive, and distribute payments; and to be accountable for the quality, cost, and delivery of health care to the ACO’s patients; and has been issued a certificate of authority.”³⁸

NYACO Shared Savings and Achievement of Quality Performance Measures

10 NYCRR Part 1003 requires that a NYACO “be accountable for quality, cost, and delivery of health care to ACO patients,” and “negotiate, receive and distribute any shared savings or losses.”³⁹ The regulations also provide that NYACOs “may enter into

³² 42 CFR § 425.118(d).

³³ 42 CFR § 425.310(c).

³⁴ 42 CFR § 425.312(a).

³⁵ Id. at § 425.312(a)(1).

³⁶ Id. at § 425.312(a)(2).

³⁷ 10 NYCRR Part 1003.

³⁸ 10 NYCRR § 1003.2(a).

³⁹ 10 NYCRR § 1003.6(b)(2) and (3).

arrangements with one or more third party health care payers to establish payment methodologies for health care services provided to the third party health care payer's enrollees provided by the ACO or for which the ACO is responsible."⁴⁰ The determination of these arrangements between NYACOs and managed care organizations (MCOs) is between those parties, but is subject to all the requirements and reviews applicable under Article 44 of the Public Health Law, the Insurance Law and regulations promulgated thereunder,⁴¹ and 10 NYCRR § 1003.11(d), which states: "The contract between an ACO and an insurer authorized pursuant to the Insurance law to write accident and health insurance in New York or a corporation licensed pursuant to Article 43 of the Insurance Law shall be subject to all the requirements and reviews applicable under the Insurance Law and regulations promulgated thereunder."

A NYACO shall submit data to the DOH Commissioner annually or at such other times as requested and in such manner and form as prescribed by the Commissioner "regarding ACO participants, patient characteristics, utilization of services, quality metrics, shared savings or losses information, complaints and grievances and other information deemed necessary to monitor the ACO's operations, eligibility and compliance."⁴² Further, "an ACO that has a contractual arrangement with a third party health care payer to cover health care services for a defined population must submit required measures for the eligible population attributed to the ACO".⁴³

NYACO Marketing Requirements

NYACO marketing materials and activities must meet the following requirements:⁴⁴

- Use template language developed by DOH, if available;
- Not be used in a discriminatory manner or for discriminatory purposes; and
- Prohibit the provision of gifts or other remuneration to patients as inducements for receiving items or services from or remaining in a NYACO or with NYACO participants.

Notification to Beneficiaries of Participation in NYACO Program

A NYACO shall (1) provide notification to its patients at the point of care that the NYACO participants are participating in a NYACO pursuant to a certificate of authority issued by the DOH; (2) post signs in their facilities to notify patients that they are participating in a NYACO pursuant to a certificate of authority issued by DOH; and (3) make available to patients, upon request, standardized written notices approved by the DOH regarding participation in an NYCO.⁴⁵

⁴⁰ 10 NYCRR § 1003.11(a).

⁴¹ 10 NYCRR § 1003.11(c).

⁴² 10 NYCRR § 1003.13.

⁴³ 10 NYCRR § 1003.10 (e).

⁴⁴ 10 NYCRR § 1003.6 (c)(5).

⁴⁵ 10 NYCRR § 1003.6 (c).

VI. Background of HHC ACO

Formation of NYC Health + Hospitals subsidiary to carry out accountable care activities

a) On June 12, 2012, the NYC Health + Hospitals Board of Directors by way of resolution approved the formation of HHC ACO, a wholly owned subsidiary public benefit corporation, in order to establish HHC ACO as an ACO. The following individuals have since been designated to key leadership roles at HHC ACO:

- Until January 8, 2018, the Chairperson of the HHC ACO Board of Directors is Stanley Brezenoff, who is currently also the Interim President and CEO of NYC Health + Hospitals; after January 8, 2018, Mitchell H. Katz, MD, will become the President and CEO of NYC Health + Hospitals and Chairperson of the HHC ACO Board of Directors.
- The Chief Executive Officer of HHC ACO is Dave A. Chokshi, MD;
- The Medical Director of HHC ACO is Lana Vardanian, MD; and
- The Chief Compliance Officer of HHC ACO is Wayne A. McNulty, Esq., CIPP, CHC. In this role, Mr. McNulty is the *designated compliance official* as required under MSSP ACO and NYACO regulations.

The HHC ACO was selected by CMS to participate in the MSSP for a three-year term that began on January 1, 2013. HHC ACO was selected by CMS to participate in the MSSP for a second three-year term that began on January 1, 2016. Under the MSSP, the HHC ACO is accountable for improving the quality of care for approximately 10,000 Medicare fee-for-service beneficiaries. HHC ACO has also applied to establish a NYACO pursuant to Article 29-E of the New York Public Health Law and its implementing regulations, 10 NYCRR Part 1003.

b) As of December 2017, the following entities have signed agreements with HHC ACO to become HHC ACO participants or otherwise perform functions or services related to HHC ACO's MSSP ACO activities:

- Coney Island Medical Practice Plan, P.C.
- Downtown Bronx Medical Associates, P.C.
- Harlem Medical Associates, P.C.
- Icahn School of Medicine at Mount Sinai
- Icahn School of Medicine at Mount Sinai, doing business as The Mount Sinai Elmhurst Faculty Practice Group
- Metropolitan Medical Practice Plan, P.C.
- New York University School of Medicine
- NYC Health & Hospitals Corporation
- Physician Affiliate Group of New York, P.C.

- Community Healthcare Network, Inc. (FQHC)
- Help-Psi Services Corp (d/b/a Brightpoint Health) (FQHC)
- University Physicians of Brooklyn Inc.

VII. HHC ACO Governance

MSSP regulations require that at least seventy-five percent (75%) of the MSSP ACO governing body consist of representatives of MMSP ACO participants.⁴⁶ The Board of Directors of HHC ACO meets this requirement. MSSP regulations also require that the MSSP ACO governing body have at least one Medicare fee-for-service beneficiary who uses the ACO services.⁴⁷ The HHC ACO Board of Directors meets this requirement. In addition to the MSSP regulations, the NYACO regulations require that the ACO governing body have at least one representative or designee from each of the following groups: (1) recipients of Medicaid or child health plans; (2) persons with other health coverage; and (3) persons who do not have health coverage.⁴⁸ The HHC ACO Board membership will be modified to meet any NYACO regulatory governance requirements, if and when a certificate of authority is issued by DOH to HHC ACO to operate as an NYACO.

The HHC ACO By-Laws authorize the Board of Directors to establish standing committees. The HHC ACO Board of Directors has established the following Committees of the Board: Audit Committee; Clinical Leadership & Quality Assurance Committee; and Governance Committee.

VIII. MSSP ACO Participation Agreements

a) Participation with HHC ACO. Each HHC ACO participant has signed an agreement with HHC ACO (“Participation Agreement”), in which it has agreed for itself and its providers to participate in the MSSP, or otherwise perform functions or services related to HHC ACO’s MSSP ACO activities, through HHC ACO, and has agreed to abide by, and will ensure that such providers abide, by the terms and conditions of (i) its agreement with HHC ACO; (ii) all applicable policies and procedures of HHC ACO; (iii) all applicable MSSP program and other legal requirements; and (iv) HHC ACO’s Participation Agreement with CMS. The Participant Agreements will be amended to meet all New York State regulatory requirements once HHC ACO is authorized by DOH to operate as a NYACO.

b) Compliance with Laws. HHC ACO and each participant has agreed to comply, and shall cause its providers and its employees and subcontractors to comply, with all applicable laws, including but not limited to (i) MSSP Regulations (42 C.F.R. Part 425), including all requirements therein applicable to ACO participants and ACO providers/suppliers, as applicable; (ii) Federal criminal law; (iii) the False Claims Act (31 U.S.C. 3729, et seq.); (iv) the Anti-Kickback Statute (42 U.S.C. 1320a-7b(b)); (v) the Civil

⁴⁶ 42 CFR § 425.106

⁴⁷ *Id.*

⁴⁸ 10 NYCRR §1003.7(c)

Monetary Penalties Law (42 U.S.C. 1320a-7a); and (vi) the Physician Self-referral Law (Stark Law) (42 U.S.C. 1395nn).

c) Confidentiality and HIPAA Compliance. HHC ACO and each participant has agreed to comply with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and to maintain the confidentiality of beneficiaries' health information, enrollment information and financial terms of its participation agreement and has agreed not to release any such information except in compliance with applicable Federal and New York State legal requirements or the written consent of the beneficiary, if applicable, and HHC ACO.

d) Excluded Providers. HHC ACO and each participant warrants and represents that neither they nor any of their employees, contractors, subcontractors or agents are ineligible persons identified on (i) the General Services Administrations' List of Parties Excluded from Federal Programs, (ii) the HHS/OIG List of Excluded Individuals/Entities, or (iii) the New York Office of the Medicaid Inspector General Medicaid Terminations and Exclusions. HHC ACO and each participant shall screen its employees, contractors, subcontractors, and agents against such lists on a monthly basis.

e) MSSP Goals and Shared Savings. Each participant has agreed to further the objectives of the MSSP by encouraging its providers/suppliers to adhere to applicable quality assurance and improvement program and evidence-based clinical guidelines under the MSSP regulations.

f) Maintenance and Access to Records. Each participant has agreed to comply with the NYC Health + Hospitals policies to prepare, maintain and retain medical records for all services provided to beneficiaries in accordance with generally accepted medical practice and HHC ACO policies. Each participant has agreed that HHC ACO shall have the right to audit and have access to participant's records on reasonable notice and during normal business hours, for purposes of determining participant's compliance with its Participation Agreement and with applicable law. Each participant has agreed to comply, and will require that its providers and staff to comply, with all audit and record maintenance and retention requirements specified in 42 C.F.R. Part 425.

g) Reporting and Disclosure; Submission of Encounter and Other Data. Each participant has agreed to submit, and require its providers to submit, to HHC ACO, or to CMS as directed by HHC ACO, encounter data with respect to such participant's participation under its Participation Agreement with HHC ACO, medical records, and such other information and data as HHC ACO may reasonably request, including without limitation and as applicable, any such information and data required to be submitted in connection with HHC ACO's reporting and other obligations under the MSSP.

h) Monitoring. Each participant has agreed to permit HHC ACO to monitor the services furnished under the Participation Agreement on an on-going basis, in any reasonable manner as necessary for HHC ACO to comply with HHC ACO's obligations to CMS.

i) Non-compliance. The Participation Agreement provides that HHC ACO will take disciplinary steps to address non-compliance by the participant or its providers with the requirements of its Participation Agreement including adherence to quality assurance

and improvement program and evidence-based clinical guidelines. Such steps may include program implementation assistance and education to the participant and/or its providers, or other appropriate remedial processes to improve compliance and performance, including the potential termination of the agreement between the participant and HHC ACO, if warranted.

j) Compliance Program and Plan. HHC ACO has agreed to maintain an effective compliance program to detect, correct and prevent incidences of fraud, waste and abuse relating to the MSSP and Federal healthcare program requirements generally. Participants have agreed to comply, and cause ACO Personnel to comply, with the requirements of this Compliance Plan. The HHC ACO relies upon a number of NYC Health + Hospitals policies and procedures, including for example, use of the NYC Health + Hospitals Compliance Helpline to anonymously report compliance issues. Helpline information is provided in Section 13 below.

IX. Additional MSSP Regulatory Requirements

Patient Inducement

a) ACO Personnel must not give or offer any gifts or other remuneration to patients as inducement for receiving items or services at HHC ACO facilities, except for certain in-kind items or services exceptions, as described more fully in 42 CFR § 425.304(a)(2). Because this is a complex regulatory area, any proposal to distribute “free” goods or services to patients should be discussed with the HHC ACO Chief Compliance Officer, Wayne McNulty, who is also the Chief Corporate Compliance Officer for NYC Health + Hospitals. HHC ACO compliance contact information is provided in Section 13 below.

Patient Avoidance

b) ACO Personnel are prohibited from avoiding at-risk patients, including those patients who:

- Have a high risk score on the CMS-HCC risk adjustment model;
- Have one or more chronic conditions;
- Are considered high cost due to hospital/ED utilization;
- Are dually eligible for Medicare and Medicaid;
- Have a high utilization pattern;
- Have a recent diagnosis that is expected to result in increased cost;
- Have a disability that entitled such patients to Medicaid; or
- Have a mental health disorder or a substance abuse disorder.⁴⁹

Key Medicare Law Prohibitions Applicable to MSSP Compliance

⁴⁹ 42 CFR § 425.20, § 425.316(b).

c) In addition to MSSP Regulations, ACO Personnel must comply with all applicable New York State and Federal laws, including, without limitation, the following:⁵⁰

- **False Claims Act.** This generally prohibits the knowing submission of false or misleading claims or statements to the federal government (31 U.S.C. § 3729[a][2]);
- **Anti-Kickback Statute.** This generally prohibits the knowing and willful exchange of remuneration for the referral of patients for items or services covered by federal health care programs (42 U.S.C. §1320a-7b[b]);
- **Civil Monetary Penalties Law.** This authorizes the imposition of penalties upon one who knowingly presents or causes to present an improper claim for a medical service (42 U.S.C. § 1320a-7a);
- **Stark Law (Physician Self-Referral Law).** This prohibits referrals by physicians to any entity with which the physician has a financial relationship that does not fit within any permitted exception (42 U.S.C. §1395nn);
- **Criminal Health Care Fraud Statute.** This makes it a crime to knowingly execute a scheme to i) defraud any health care benefit program or ii) obtain by means of false or fraudulent representations or promises any money or property owned by or under the control of any health care benefit program (18 U.S.C. § 1347);
- **Exclusions Authorities.** This prohibits Federal Health Care Program (e.g. Medicare and Medicaid) payment for any items or services furnished by any individual or entity excluded from participation in any Federal Health Care Program or at the medical direction or the prescription of any excluded party. (See *OIG Special Advisory Bulletin on the effect of Exclusion from Participation in Federal Health Care Programs* (May 8, 2013); and
- **New York State False Claims Act.** This is similar to the Federal False Claims Act. It imposes penalties and fines upon individuals and entities who knowingly file false or fraudulent claims for payment from any state or local government, including health care programs such as Medicaid. (State Finance Law §§ 187-194).

⁵⁰ For more details on laws and regulations, see the Deficit Reduction Act of 2005 Memorandum attached hereto as Appendix B and the HHC ACO Compliance Training PowerPoint presentation attached hereto as Appendix C.

X. Conflicts of Interest

The MSSP regulations⁵¹, the NYACO regulations⁵² and the HHC ACO By-laws⁵³ require that HHC ACO have a conflicts of interest policy. An ACO conflicts of interest policy must: (i) require members of the HHC ACO Board of Directors to disclose relevant financial interests; (ii) provide a procedure to determine whether a conflict of interest exists and set forth a process to address any conflicts that arise; and (iii) address remedial action for members of the HHC ACO Board that fail to comply with the policy.⁵⁴

Article 6 of the HHC ACO By-laws states that “Chapter 68⁵⁵ of the Charter of the City of New York defines a “code of ethics,” which outlines the standards of conduct governing the relationship between private interests and the proper discharge of official duties of all employees and directors of the New York City Health and Hospitals Corporation, including those who are working for the Corporation or who are directors of the Corporation [HHC ACO].⁵⁶ Chapter 68 embodies an extensive recitation of acts that constitute conflicts of interest and are thereby prohibited.”

“The New York City Health and Hospitals Corporation has promulgated its own ‘Code of Ethics’ which outlines the standards of conduct governing the relationship between private interests and the proper discharge of official duties of all personnel who are not covered by Chapter 68. Similar to Chapter 68, the New York City Health and Hospitals Corporation’s Code of Ethics embodies an extensive recitation of acts that constitute conflicts of interest and are thereby prohibited. The Corporation [HHC ACO] has adopted the Code of Ethics with respect to its personnel and Directors who are not subject to Chapter 68.

The [HHC ACO] Board is committed to recognizing the Corporation’s responsibility to organizational ethics and expects, therefore, every employee and Board member to support and adhere to the principles and policies set forth in Chapter 68 and the Code of Ethics.”⁵⁷

NYC Health + Hospitals has established a Committee on Conduct and Practice to implement the Code of Ethics and to provide advisory opinions as well as investigations and disciplinary actions. Any questions regarding Chapter 68 can be directed to the NYC Health + Hospitals Office of Legal Affairs (“OLA”) or the NYC Conflicts of Interest Board. Questions about the NYC Health + Hospitals’ Code of Ethics may also be directed to the

⁵¹ 42 CFR § 425.106(d).

⁵² 10 NYCRR § 1003.7(e).

⁵³ HHC ACO, Inc. By-Laws Article 6.

⁵⁴ 42 CFR § 425.106(d) (applicable to ACOs participating in the MSSP.)

⁵⁵ Chapter 68 of the New York City Charter, § 2600 et seq.

⁵⁶ NYC Conflicts of Interest Board, *About COIB, Who is Covered by Chapter 68 of the City Charter, Conflicts of Interest Law?* accessed at http://www.nyc.gov/html/conflicts/html/about/about.shtml#chapter_68. All NYC Health + Hospitals Board Members, officers, and employees are subject to the Conflicts of Interest Law, whether they are paid or unpaid, whether they are full-time, part-time, or per diem, and regardless of their salary or rank. The Conflicts of Interest Board, which is the ethics Board for the City of New York, is the independent, non-mayoral City agency charged with interpreting and enforcing the Conflicts of Interest Law.

⁵⁷ HHC ACO, Inc. By-laws .

OLA. Formal requests for advisory opinions from the Committee on Conduct and Practice under the NYC Health + Hospitals' Code of Ethics must be filed in writing with the Secretary of NYC Health + Hospitals.

XI. HHC ACO Records Management Program

Under Article 57-A of the New York State Arts and Cultural Affairs Law, HCC ACO, as a public benefit wholly owned subsidiary of NYC Health + Hospitals, is considered a "local government" and as such, is required to establish a Records Management Program for the organized and productive management of records.⁵⁸

All records of HHC ACO must be maintained and disposed of as set forth in NYC Health + Hospitals Operating Procedure 120-19 *Corporate Records Management Program Guidelines for Corporate Record Retention and Disposal* ("OP-120-19"). OP-120-19 can be accessed at the NYC Health + Hospitals public website <http://www.nychealthandhospitals.org/wp-content/uploads/2016/07/OP120-19.pdf> Additionally, notwithstanding anything stated in OP 120-19 to the contrary, all HHC ACO records, including any book, contract, document, or any other tangible source of information (such as documents or data related to Medicare utilization and costs, quality performance measures, shared savings distributions, and other financial arrangements related to HHC ACO activity) that may reasonably be likely to be part of an audit, evaluation, investigation and inspection of the HHC ACO's compliance with (i) MSSP requirements; (ii) quality of services performed; (iii) right to any shared savings payment; (iv) obligation to repay losses; (v) ability to bear the risk of potential losses; and (vi) ability to repay any losses to CMS, must be maintained for a minimum period of ten years from the termination of the HHC ACO's agreement to participate in the MSSP Program, or from the date of completion of any audit, evaluation, investigation or inspection, whichever is later,⁵⁹ except as follows:

- a) CMS Determination of Special Need – Where CMS has determined that a record(s) requires a longer period of retention than outlined above and provides HHC ACO with at least 30 days' notice before the subject record's normal disposition date,⁶⁰ and
- b) The Termination, Dispute, or Allegation of Fraud or Similar Fault against HHC ACO – Where there has been a termination, dispute, or allegation against HHC ACO or ACO Personnel, HHC ACO must maintain records for an additional six years from the date of any resulting final resolution of the termination, dispute or allegation of fraud or similar fault.⁶¹

⁵⁸ See 8 NYCRR § 185.1(b) (defining records management program as an "ongoing, coordinated, administrative effort to systematically manage [HHC ACO's] records from the creation to final disposition").

⁵⁹ 42 CFR § 425.314 (b) (providing, in pertinent part, that all records "sufficient to enable the audit, evaluation, investigation and inspection of the ACO's compliance with program requirements, quality of services performed, right to any shared savings payment, or obligation to repay losses, ability to bear the risk of potential losses, and ability to repay any losses to CMS", must be maintained "for a period of ten years from the final date of the agreement period or from the date of completion of any audit, evaluation or inspection, whichever is later . . .").

⁶⁰ *Id.* at § 425.314(b)(2)(i).

⁶¹ *Id.* at § 425.314(b)(2)(ii).

XII. New York State Public Authorities Law

HHC ACO is a wholly owned public benefit subsidiary of NYC Health + Hospitals; as such, it is a public authority under the Public Authorities Accountability Act of 2005 and the Public Authorities Reform Act of 2009 (referred to collectively as “PAAA”). Accordingly, HHC ACO is subject to certain PAAA requirements, including without limitation, board governance and board committee requirements. Specifically, PAAA provides that public authority Audit and Governance Board Committees should each have not less than 3 independent (as described below) members and the independent members shall constitute a majority of the Committee. The Authorities Budget Office (“ABO”), which enforces and implements PAAA and has the authority to remove Board members, has issued guidance (model charter) and best practices that recommends that all Board members of the Audit and Governance committees be nonemployees of the NYC Health + Hospitals or HHC ACO, and not be involved in any business relationship with NYC Health + Hospitals or HHC ACO. Additionally, members of the Audit committee should be knowledgeable of financial and accounting issues. The OCC and the NYC Health + Hospitals’ OLA will ensure HHC ACO compliance with the applicable PAAA requirements.

XIII. Reporting HHC ACO Compliance Issues and Non-Retaliation Policy

a) ACO Personnel have an affirmative obligation to report compliance issues related to the HHC ACO, including any suspected violation of law. ACO Personnel that fail to adhere to these reporting requirements shall be subject to termination of employment, contract and/or other affiliation with the HHC ACO. ACO Personnel must report compliance issues concerning HHC ACO activities in one of the following ways:

- By anonymously reporting through NYC Health + Hospitals’ confidential Compliance Helpline at **1-866-HELP-HHC (1-866-435-7442)**;
- By e-mailing COMPLIANCE@nychhc.org; or
- By sending a letter through postal mail (or if you are located at HHC or one of its facilities, by interoffice mail) addressed to:

**NYC Health + Hospitals/HHC ACO, Inc.
Office of Corporate Compliance
160 Water Street, Suite 1129
New York, NY 10016**

b) The HHC ACO written policies assure all ACO Personnel and any other individual or entity that if they bring a compliance matter to the attention of the OCC, retaliation of any kind is strictly prohibited. ACO Personnel or any person or entity employed by, under contract with or otherwise associated with the HHC ACO that violates the anti-retaliation

policy will be subject to disciplinary action up to and including termination of employment, contract and/or other affiliation with the HHC ACO. The DRA Memorandum sent to all ACO Personnel discusses the Federal and State laws that protect whistleblowers.

HHC ACO INC.
STANDARDS OF CONDUCT

Effective Date: December 18, 2017

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HHC ACO INC.

STANDARDS OF CONDUCT

I. SOC OVERVIEW.

The *Standards of Conduct* (“SOC”) is a guide that sets forth HHC ACO Inc.’s (the “ACO”) compliance expectations and commitment to comply with all applicable Federal and State laws.¹ It describes the ACO’s standards of professional conduct and efforts to prevent fraud, waste, and abuse. All entities and individuals described in Section II below are expected to carry out their duties and functions in a manner that is lawful and ethical.

II. WHO DOES THE SOC APPLY TO?

The SOC applies to and governs the conduct of all ACO Personnel. ACO Personnel is defined to include the following: (i) ACO Participants (as defined in 42 CFR Part 425) that have entered into Participation Agreements with the ACO and ACO Providers/Suppliers (as defined in 42 CFR Part 425); and (ii) other individuals or entities that have entered into agreements with the ACO for the performance of functions or services related to the ACO’s activities. Many ACO Personnel are already covered by the NYC Health + Hospitals Principles of Professional Conduct (“POPC”), a guide that sets forth NYC Health + Hospitals’ compliance expectations and commitment to comply with all applicable Federal and State laws; however, the SOC will serve as a supplemental guidance for ACO Personnel with more specific information about Medicare Shared Savings Program (“MSSP”) compliance requirements.²

III. SOC CORE OBJECTIVES.

The core objectives of the SOC are to ensure that all ACO Personnel:

- On June 12, 2012, the NYC Health + Hospitals Board of Directors by way of resolution approved the formation of HHC ACO Inc., a wholly owned subsidiary public benefit corporation, in order to establish the ACO for purposes of meeting the goals of the MSSP, and fulfilling the ACO’s mission and to further the goals of the MSSP by:
 - Reducing fragmentation of healthcare delivery;

¹ HHC ACO has applied to establish a New York Accountable Care Organization (“NYACO”) pursuant to Article 29-E of the New York Public Health Law and its implementing regulations at 10 NYCRR Part 1003. HHC ACO will comply with all applicable laws and regulations applicable to NYACO’s if its application is granted. If granted, this SOC will be revised to reflect applicable NYACO laws and regulations.

² The POPC applies to NYC Health + Hospitals Workforce Members, Business Partners and Agents. Many of the ACO Personnel fall within one or more of these categories.

- Improving care outcomes of Medicare Fee-for-Service beneficiaries; and
- Lowering overall growth in healthcare expenditures.
- Deliver seamless, coordinated, high quality care to Medicare Fee-for-Service beneficiaries linked to participating primary care providers through an organized group of health system affiliated physicians and other healthcare providers who have agreed to:
 - work together to treat a defined population of Medicare Fee-for-Service beneficiaries across care settings, including primary and specialty care, hospitalizations and long-term care; and
 - become accountable for the quality, cost, and overall care delivered to the defined population of beneficiaries.
- Prevent, identify, and correct unlawful and unethical behavior and fraud, waste, and abuse:
 - Identify, assess, and monitor potential risk areas;
 - Adhere to all applicable provisions of Federal and State law, including, but not limited to, the Federal MSSP regulations at 42 CFR Part 425; the ACO Compliance Program, including provisions that require reporting of violations to appropriate parties;
 - Prevent the submission of inappropriate claims and billings and the receipt of improper payments by implementing training initiatives, establishing internal controls, and carrying out auditing and monitoring activities; and
 - Minimize financial loss and reduce the likelihood of an overpayment by a federal health care program, governmental entity or other third party payor.
- Deliver high quality, medically necessary care and services to all individuals in need regardless of their ability to pay:
 - Ensure that only health practitioners and other health professionals who are duly licensed, certified, credentialed or otherwise qualified in accordance with Federal and State law, medical staff bylaws and associated rules, and internal policies, are authorized to deliver care to patients;
 - Respect and protect patients' rights;
 - Deliver care and services in a culturally sensitive manner; and
 - Strive for the highest level of patient satisfaction.
- Maintain a respectful, healthy, productive, and safe work environment with the goals of preventing discriminatory and other inappropriate forms of

conduct, reducing the likelihood of illnesses and injuries, and helping ACO Personnel realize their full potential:

- Insist on equal employment opportunities for all ACO Personnel and employment candidates regardless of any protected characteristic including, without limitation, race, age, gender, gender identity, sexual orientation, religion, ethnicity, disability or any other any other protected class covered by Federal, State, and/or local anti-discrimination laws;
 - Promptly respond to and address all acts or threats of violence, intimidation, discrimination, harassment or disruptive behavior;
 - Encourage ACO Personnel to realize their full potential;
 - Insist on reasonable accommodations to ACO Personnel with disabilities; and
 - Ensure performance of initial and periodic health screenings of ACO Personnel as required by applicable law and internal policies.
- Facilitate and promote standards of conduct that detect, reduce, and/or effectively manage conflicts of interest;
 - Respect the environment in which ACO Personnel work and NYC Health + Hospitals facilities operate;
 - Handle, use, and dispose of all toxic, hazardous, radioactive, and pharmacological agents, materials, instruments, and supplies in a safe manner consistent with applicable law and internal policies.
 - Establish mandatory compliance and other training and education initiatives;
 - Engage in only fair business practices;
 - Maintain an information governance program wherein patient, billing, employment, and other business records are authenticated and maintained in accordance with the ACO's record management, privacy, and data security policies;
 - Ensure that all business records are kept securely, recorded accurately, authentic when produced, and available when needed;
 - Protect patient and workforce member privacy and confidentiality; and
 - Provide notice to patients and other affected parties as required by applicable law and internal policies in the case of a breach of confidential information.

- Participate in the ACO Compliance Program and promptly report compliance concerns to appropriate parties as required by the MSSP regulations and ACO policies;
- As a condition of employment or contract (or other agreement), comply with the SOC and, where appropriate, other ACO policies that relate to the types of services, duties, functions, and products that such ACO Personnel provide;
- Prohibit and promptly report to appropriate parties allegations of retaliation, harassment or intimidation in response to ACO Personnel or other stakeholder participation in the ACO Compliance Program including, without limitation, the reporting of any actual or potential compliance issue or concern;
- Establish and enforce fair and consistent disciplinary policies and procedures for ACO Personnel violations of law or ACO policies; and
- Adhere to all ACO contractual commitments with Federal and State regulatory agencies.

IV. WHAT ARE THE RESPONSIBILITIES OF ACO PERSONNEL UNDER THE SOC?

All ACO Personnel are required to carry out their ACO related functions and duties - whether delivering clinical care, assisting in coding, billing or claims reimbursement activities, providing administrative oversight of NYC Health + Hospitals' operations, as applicable, or acting as support personnel - in a professional and ethical manner. This means, ACO Personnel are responsible for the following:

- Not engaging in any acts, conduct or practice that would be contrary to any of the core objectives listed in Section III above or interfere with the ACO achieving any of these core objectives;
- Following the SOC and other applicable ACO policies and procedures, and applicable law;
- Not engaging in unprofessional conduct, examples of which are provided in Section V below;
- Ensuring that any shared savings will be distributed pursuant to the methodology agreed to in the participation agreement with the ACO;
- Completing assigned training and education programs;
- Fully cooperating with any internal or government investigation;

- Reporting, as outlined in Section VII below, any event, occurrence, activity or other incident that appears to violate applicable law or ACO policies and procedures;
- Ensuring that any information documented in patient records and business applications is accurate, complete and truthful, including quality measures documentation and beneficiary notification tracking;
- Keeping all required job licenses, registrations and/or certifications up to date; and
- Not giving or offering any gifts or other remuneration to patients as inducement for receiving items or services at ACO facilities, except for certain in-kind items or services exceptions, as described more fully in 42 CFR § 425.304(a)(2). Because this is a complex regulatory area, any proposal to distribute “free” goods or services to patients should be discussed with the HHC ACO Chief Compliance Officer, Wayne McNulty, who is also the Chief Corporate Compliance Officer for NYC Health + Hospitals.

ACO Personnel must understand and comply with the applicable rules and policies that relate to their particular duties, functions or role. If ACO Personnel do not know what rules or policies apply to his/her position, that individual should talk to his/her supervisor, manager, administrative head or chief of service, as applicable.

V. WHAT ARE SOME EXAMPLES OF UNPROFESSIONAL CONDUCT?

The following are some examples of unprofessional conduct and are prohibited by the ACO:

- Submitting false and/or fraudulent claims;
- Improper billing practices, including, but not limited to:
 - Billing for items or services not rendered or those that are not medically necessary;
 - Upcoding - using a billing or DRG code that provides for a higher payment rate than the correct code;
 - Submitting multiple claims for a single service or submitting a claim to more than one primary payor at the same time; and
 - Unbundling - submitting claims in a piecemeal or fragmented way to increase payment.
- Retaining any overpayment;

- Interfering with or otherwise impeding an internal or government investigation;
- Failing to deliver medical care to any individual based on their ability to pay;
- Failing to comply with laws governing workplace safety;
- Engaging in conduct that is discriminatory in nature, amounts to sexual or other harassment, or constitutes intimidation, as well engaging in any act or threat of violence;
- Engaging in conduct that is hazardous to the environment;
- Conducting unlawful marketing practices to enroll ACO beneficiaries into the ACO including, but not limited to, engaging in unlawful beneficiary inducements;
- Avoiding at-risk patients, including those patients who: (i) have a high risk score on the CMS-HCC risk adjustment model; (ii) have one or more chronic conditions; (iii) are considered high cost due to hospital/Emergency Department utilization; (iv) are dual eligible for Medicare and Medicaid; (v) have a disability that entitles such patient to Medicaid; or (vi) have a mental health disorder or a substance abuse disorder;
- Engaging in conflicts of interest:
 - Giving or accepting gifts or services from a patient, ACO beneficiary, ACO Provider/Supplier, vendor or potential vendor; and
 - Failing to comply with applicable conflicts of interest laws and policies.
- Failing to complete mandated training;
- Failing to maintain accurate, clear, and comprehensive medical records;
- Improperly using, disclosing, accessing, transmitting, and/or storing patient, workforce member or business information;
- Entering into an agreement with an individual or entity for ACO related activities the terms of which: (i) do not call for compliance with the SOC; or (ii) provide for activities and services that constitute unprofessional conduct.

- Engaging in business practices and acts that are unfair, deceptive or anti-competitive;
- Failing to promptly report a potential compliance concern or incident;
- Submitting false statements, certifications, qualifications and/or documentation required in any business dealings or one's role;
- Any violation of applicable ACO policies and procedures; and
- Other types of unprofessional conduct, including, but not limited to:
 - Engaging in improper or illegal business arrangements;
 - Giving or receiving anything of value for referrals for services paid for by the State or Federal government;
 - Hiring or contracting with persons or entities excluded from participation in Federal health care programs; and
 - Engaging in any activity or form of conduct that may result in the imposition of civil monetary penalties.

VI. WHAT HAPPENS IF YOU ENGAGE IN UNPROFESSIONAL CONDUCT OR OTHERWISE VIOLATE THE SOC?

ACO Personnel who engage in unprofessional conduct or act contrary to applicable law or ACO policies and procedures, many of which are summarized in the SOC core objectives or other elements of the SOC, shall be subject to disciplinary action up to and including termination of employment, contract, and/or other affiliation with the ACO, as applicable.

VII. HOW TO REPORT ISSUES OR VIOLATIONS.

ACO Personnel, as applicable, are responsible for promptly reporting to the ACO any suspected unlawful or unethical behavior or incidents and/or violations of the SOC. Reports may be made, by phone, fax or e-mail in the following manner:

HHC ACO INC.
Office of Corporate Compliance
160 Water Street, Suite 1129
New York, NY 10038
Telephone: (646) 458-7799
Facsimile: (646) 458-5624
E-mail: COMPLIANCE@nychhc.org
Confidential Compliance Helpline: 1-866-HELP-HHC (1-866-435-7442)

Reports may be made anonymously by using the **CONFIDENTIAL COMPLIANCE HELPLINE** provided directly above. Each report received by will be treated confidentially, fully assessed, and investigated as warranted.

VIII. PROHIBITION OF RETALIATION/WHISTLEBLOWER PROTECTION.

The ACO is committed to protecting whistleblowers. Accordingly, the ACO strictly prohibits intimidation, harassment, or retaliation, in any form against any individual who in good faith participates in the ACO Corporate Compliance Program by reporting or participating in the investigation of suspected violations of law, regulation, policies and/or suspicions of fraud, waste, or abuse. Examples of retaliation include unjustified discharge/termination, demotion, or suspension of employment; threatening or harassing behavior; and/or negative or onerous change in any term or condition of employment.

Any attempt by an individual or entity to intimidate, harass, or retaliate against a reporter or potential reporter will result in action up to and including termination of employment, contract, and/or other affiliation with the ACO.

IX. STAY INFORMED!

ACO Personnel are strongly encouraged to familiarize themselves with the ACO's mission, values, and to stay informed of the many ACO policies related to the SOC's core objectives by visiting the ACO's public website at <http://www.nychealthandhospitals.org/hhc-acoinc-an-accountable-care-organization/> Questions regarding the SOC, ACO Compliance Program or any of the following important topics, may be addressed by contacting the ACO Office of Corporate Compliance as described in Section VII above:

- ACO Compliance Program
- Stark Law, Anti-Kickback Statute, Federal False Claims Act, Civil Monetary Penalties Law, Exclusion Authorities
- Billing, coding, payments, accounting, and record keeping;
- Conflicts of interest;
- Customer and vendor relations;
- Discrimination, sexual harassment, and retaliation;
- Patient rights;
- HIPAA and patient confidentiality;
- Workplace safety and environment of care issues;
- Improper business arrangements (e.g., leases) or referrals; and
- Information governance.