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MEMORANDUM

To: OneCity Health Partners
From: Wayne A. McNulty 
Senior Assistant Vice President &
Chief Corporate Compliance Officer
Date: December 28, 2017
Re: **DSRIP Compliance Training and Education**

Please allow this communication to serve as a reminder of the Delivery System Reform Incentive Payment (“DSRIP”) program compliance training and education requirements applicable to all performing providers (hereinafter also referred to as “participants” and “partners”) in the NYC Health + Hospitals-sponsored OneCity Health (“NYC Health + Hospitals/OneCity Health” or “OneCity Health”) Performing Provider System (“PPS”). The following paragraphs: (i) outline DSRIP compliance training and education requirements under New York State (the “State”) law and State Office of the Medicaid Inspector General (“OMIG”) DSRIP compliance guidance; (ii) provide an overview of the attached *Delivery System Reform Incentive Payment Program Compliance Training and Education* PowerPoint presentation, which may be utilized by OneCity Health partners to meet their compliance training obligations; (iii) provide a brief description of training materials and information previously provided by NYC Health + Hospitals to OneCity Health partners during the calendar year 2017; (iv) provide information on how OneCity Health partners may confirm their completion of the DSRIP compliance training; and (v) provide the contact information for the NYC Health + Hospitals/OneCity Health Office of Corporate Compliance.

I. Background and Legal Requirements

Pursuant to State mandatory provider compliance program regulations, NYC Health + Hospitals (sometimes referred to herein as the “System”) is required to adopt and implement an effective compliance program, which includes the provision of periodic compliance “training and education of all affected employees and persons associated

with NYC Health + Hospitals . . . on compliance issues and expectations of the compliance program.”¹ Under OMIG compliance guidance, these compliance and training and education requirements extend to the DSRIP program. More particularly, OneCity Health as a PPS lead, is responsible for taking “reasonable steps to ensure that [M]edicaid funds distributed as part of the DSRIP program are not connected with fraud, waste, and abuse”², and compliance training and education is a key component in meeting this requirement. Accordingly, all OneCity Health partners that have received or are eligible to receive DSRIP funds are required to undergo compliance training and education on the NYC Health + Hospitals/OneCity Health compliance program.³ OneCity Health partners may satisfy their compliance and training obligations by utilizing the compliance materials and following the directions provided in sections II and IV, *infra*.

II. OneCity Health DSRIP Compliance Training and Education PowerPoint Presentation

To assist OneCity Health partners meet their DSRIP compliance training and education requirements, the OCC has attached to this memorandum (See Attachment “A”) the *Delivery System Incentive Payment Program Compliance Training and Education PowerPoint* presentation (the “PowerPoint”) prepared by OneCity Health for DSRIP compliance training and education purposes. OneCity Health partners are welcomed to utilize this PowerPoint to meet their DSRIP compliance training and education obligations. OneCity Health partners should consult with their legal counsel if they have any legal questions regarding the content of the PowerPoint.

A. Overview of the DSRIP Compliance Training and Education PowerPoint

The PowerPoint covers the following core topics:

- What is DSRIP and who are the key players?
- What is NYC Health + Hospitals/OneCity Health Performing Provider System?
- Why is the establishment of compliance program beneficial?
- What are the legally required elements of a compliance program?
- With regard to the required compliance program elements, what are the special considerations for DSRIP compliance?

¹ 18 NYCRR §521.2[c][3]; *see also* 18 NYCRR § 521.1; Social Services Law § 363-d [2][c]

² Office of the Medicaid Inspector General Delivery System Reform Incentive Payment (“DSRIP”) Program DSRIP Compliance Guidance 2015-01 –revised – Special Considerations for Performing Provider System (“PPS”) Leads’ Compliance Program available at:

https://www.omig.ny.gov/images/stories/compliance_alerts/20150901_DSRIP_CompGuidance_2015-01_Rev.pdf

³ *See id.*

- What are the definitions of the terms Fraud, Waste & Abuse and corresponding examples of the same?
- What are some of the Federal laws covering Fraud, Waste and Abuse that OneCity Health participants should be familiar with?
- How can OneCity Health participants report a DSRIP-related compliance issue or concern?

The following five (5) sections of the PowerPoint cover the foregoing topics.

Introduction to DSRIP

This section provides an introduction to DSRIP as well as (i) discusses the key players involved in the DSRIP program; and (ii) reviews several important terms that are unique to the DSRIP program.

General Compliance Requirements for Medicaid Providers

This section elaborates on the definition of the term *Compliance*, as well as its purpose and benefits, which include the importance of early detection and reporting of compliance issues. This section also discusses Medicaid compliance program compliance certification requirements, compliance risk areas, and the eight required elements of an effective compliance program under State law.

Special Considerations for DSRIP Compliance

This section expands upon compliance program elements as they pertain to DSRIP-related compliance requirements. This section includes the eight DSRIP specific compliance program elements and further describes how NYC Health + Hospitals/OneCity Health is meeting these requirements.

Fraud, Waste and Abuse & Relevant Laws

This section explains the definitions of terms *fraud, waste, and abuse*, as those terms are generally used in the healthcare context, by providing specific examples of fraud, waste, and abuse (e.g., improper billing for services and misuse of coding on a claim). This section also provides an overview of some important Federal laws that are relevant to understanding OneCity Health's Compliance requirements including the following: (i) the Deficit Reduction Act; (ii) False Claims Act; (iii) Physician Self-Referral Law (the "Stark Law"); (iv) Medicare and Medicaid Patient Protection Act (the "Anti-Kickback Statute"); (v) Criminal Health Care Fraud Statute; (vi) Civil Monetary Penalties Law; and (vii) The Exclusion Authorities.

Reporting Compliance Issues

This section provides information on how to report compliance issues or concerns to NYC Health + Hospitals/OneCity Health Office of Corporate Compliance.

B. How May the PowerPoint be Used?

It is envisioned by OneCity Health that the PowerPoint will be utilized by OneCity Health partners in one or more of the following three ways: (i) the development of a presentation for in-person/live compliance and education training; (ii) the incorporation of the content of the PowerPoint in the existing OneCity Health partners' compliance training and education computerized (or otherwise automated) training models; or (iii) the distribution of the PowerPoint to their Workforce Members involved with or otherwise affected by the DSRIP program.

III. Previous Training and Education Disseminated to OneCity Health Partners

As first mentioned above, NYC Health + Hospitals/OneCity Health has provided compliance training materials and information to OneCity Health partners throughout the 2017 calendar year. The paragraphs that follow provide a brief description of these training efforts.

A. Deficit Reduction Act of 2005

On September 28, 2017, the Office of Corporate Compliance (“OCC”) within the NYC Health + Hospitals provided all OneCity Health partners with a memorandum concerning the Deficit Reduction Act of 2005, wherein recipients were informed of: (i) NYC Health + Hospitals internal policies covering the prevention and detection of fraud, waste, and abuse; (ii) the Federal False Claims Act and any similar law under the State that governs false claims and statements; and (iii) whistleblower protections under Federal and State laws. As part of meeting compliance training requirements, OneCity Health partners should, if not already done, disseminate the DRA memorandum to its workforce members that are involved with or otherwise affected by the DSRIP program. OneCity Health partners may access the original DRA memorandum on the NYC Health + Hospitals public website at: <http://www.nychealthandhospitals.org/wp-content/uploads/2017/09/final-dra-memo.pdf> .

The DRA Memorandum covered the following key points:

- The various NYC Health + Hospitals written policies and procedures implemented to address fraud, waste and abuse;
 - NYC Health + Hospitals Corporate Compliance Plan (the “Plan”);

- NYC Health + Hospitals Operating Procedure (“OP”) 50-1-Corporate Compliance Program;
- NYC Health + Hospitals Principles of Professional Conduct (“POPC”);
- A Guide to Compliance at NYC Health + Hospitals; and
- Memorandum from the System’s Chief Corporate Compliance Officer Regarding Medicare Parts C and D Training
- *An outline of the following Federal and State Laws that Govern False Claims and Statements, including without limitation, the following:*
 - Federal False Claims Obligation (42 USC §1396a (a)(68));
 - Federal False Claims Act (31 USC §§ 3729-3733);
 - Administrative Remedies for False Claims (31 USC Chapter 38, Sections 3801-3812);
 - New York False Claims Act (State Finance Law §§ 187-194);
 - Social Services Law §§ 145, 145-b, 145-c, and 366-b; and
 - Penal Law Article §§ 155, 175, 176, 177.
- *An Overview of the following Federal and State Whistleblower Protection Laws:*
 - Federal False Claims Act (31 U.S.C. §3730(h));
 - New York State False Claim Act (State Finance Law §191);and
 - New York State Labor Law §§ 740 and 741; and
- *Instructions on Where OneCity Health partners may Access NYC Health + Hospitals Policies and Procedures*
 - As noted in the original DRA memorandum, a more detailed overview of the foregoing policies and procedures and applicable laws concerning fraud, waste, abuse, and whistleblower protections, as well the Plan, OP 50-1, the POPC, and the Guide to Compliance, may all be accessed by way of the NYC Health +

Hospitals public website at:
www.nychealthandhospitals.org/policies-procedures/ (see the bottom of the webpage in section titled “*Compliance with the Deficit Reduction Act of 2005.*”) OneCity Health partners may also obtain copies of the same by contacting NYC Health + Hospitals’ Office of Corporate Compliance by phone at (646) 458-7799, or by e-mail at COMPLIANCE@nychhc.org.

B. Corporate Compliance and Ethics Week Message from the Chief Corporate Compliance Officer

On November 6, 2017, the System’s Chief Corporate Compliance Officer distributed to the System’s Workforce Members, Business Partners (including OneCity Health partners), and Agents, a message commemorating National Corporate Compliance and Ethics Week, November 5-11, 2017. The message asked for support of this year’s theme ***Make Good Choices*** and encouraged the Workforce Members, Business Partners, and Agents to continue to perform their duties, functions, and responsibilities in a fair and honest manner. To that end, accompanying the message was the NYC Health + Hospitals Principles of Professional Conduct (“POPC”), which is a guide that sets forth the System’s Compliance expectations, standards of professional conduct, and commitment to comply with applicable Federal and State law. The message can be accessed at: <http://www.nychealthandhospitals.org/wp-content/uploads/2017/12/CCOmessage2017.pdf>

C. CMS/Medicare Parts C and D General Compliance Training

On December 28, 2017, the System provided its Workforce Members, Business Partners (including, without limitation, OneCity Health partners), and Agents a Memorandum that outlined the Centers for Medicare and Medicaid Services (“CMS”) compliance training and education requirements that the System must satisfy in its role as a provider under contract with Medicare Advantage Organizations (“MAOs”). Examples of MAOs include MetroPlus, Aetna, Fidelis, Empire Blue Cross Blue Shield, EmblemHealth, Healthfirst, and United Healthcare, each of which has a provider agreement with the System. The Memorandum includes as attachments the following documents: (i) the *CMS Medicare Parts C and D General Compliance Training* slides; and (ii) the *NYC Health + Hospitals Corporate Compliance and Ethics Program: Summary of Workforce Member, Business Partner, and Agent Responsibilities*.

The main learning objective of the CMS Compliance Training is to ensure all Workforce Members, Business Partners, and Agents recognize how: (i) a compliance program operates; and (ii) compliance program violations should be reported. The CMS Compliance Training also places an emphasis on ethical behavior. The Memorandum and CMS Compliance Training can be accessed at: <http://www.nychealthandhospitals.org/policies-procedures/> (see bottom of the webpage in section titled “*CMS Medicare Parts C & D Compliance Training*”).

IV. Follow Up/Confirmation that the DSRIP Compliance Training Requirements Have Been Completed

In February 2018, One City Health will provide OneCity Health partners with instructions on how they can certify, by way of a Compliance Attestation, that they have met, among other things, the DSRIP compliance training and education requirements as described herein.

In the interim, OneCity Health partners are encouraged to contact Kevin Rogan, NYC Health + Hospitals/One City Health Senior Executive Corporate Compliance Officer, at 646-458-5644 or Kevin.Rogan@nychhc.org if they have any questions pertaining to this communication, the PowerPoint, the compliance training and education certification or other DSRIP-related compliance concerns.

Thank you for participating in the NYC Health + Hospitals/OneCity Health Compliance and Ethics Program.

Attachment.

Attachment A

DELIVERY SYSTEM REFORM INCENTIVE PAYMENT (“DSRIP”) PROGRAM

Compliance Training and Education

Wayne A. McNulty
Chief Corporate Compliance Officer
NYC Health + Hospitals/OneCity Health

December 28, 2017

Purpose and Limitations

The following presentation is intended for the educational use by NYC Health + Hospitals/OneCity Health (“OneCity Health”) Performing Provider System (“PPS”) participants (hereinafter “participants”, “partners” or “performing providers”) and their respective workforce members who are involved or associated with, or otherwise affected by, the New York State Design System Reform Incentive Payment (“DSRIP”) Program.

The content of the presentation was developed and intended for informational and educational purposes only, and shall not be construed as legal advice. Accordingly, OneCity Health participants are advised to consult with their organization’s attorney with respect to: (i) any legal questions that may arise regarding the content of this presentation; and (ii) any legal obligations and compliance requirements that may stem from their participation in the DSRIP program.

OneCity Health participants are welcomed to utilize this presentation to assist them in satisfying their obligation to comply with DSRIP compliance requirements. Notwithstanding, the ultimate responsibility to comply with DSRIP requirements and any related Federal or State law lies solely with each OneCity Health participant.

The design and some of the information on training slides 6-9, 17, 18, and 22 was derived from a DSRIP Compliance Education and Training Template, which is the product of the collaborative efforts by a Greater New York Hospital Association (GNYHA) member workgroup comprised of compliance professionals.

Introduction

Thank you for taking the time to complete this training. This presentation is designed to provide you with information specific to the OneCity Health PPS and related DSRIP compliance issues. This presentation is divided into the following 5 sections:

Section 1: Introduction to DSRIP

Section 2: General Compliance Requirements for Medicaid Providers

Section 3: Special Considerations for DSRIP Compliance

Section 4: Fraud, Waste and Abuse & Relevant Laws

Section 5: Reporting Compliance Issues

Training Objectives

- What is DSRIP and who are the key players?
- What is NYC Health + Hospitals/OneCity Health Performing Provider System?
- Why is the establishment of compliance program beneficial?
- What are the legally required elements of a compliance program?
- With regard to the required compliance program elements, what are the special considerations for DSRIP compliance?
- What are the definitions of the terms *Fraud*, *Waste* & *Abuse* and corresponding examples of the same?
- What are some of the Federal laws covering *Fraud*, *Waste* and *Abuse* that OneCity Health participants should be familiar with?
- How can OneCity Health participants report a DSRIP-related compliance issue or concern?

Section 1: Introduction to DSRIP

THIS SECTION: (I) PROVIDES AN INTRODUCTION TO THE DSRIP PROGRAM; (II) DISCUSSES THE KEY PLAYERS INVOLVED IN THE DSRIP PROGRAM; AND (III) REVIEWS SEVERAL IMPORTANT TERMS THAT ARE UNIQUE TO THE DSRIP PROGRAM.

ONECITY HEALTH PARTICIPANTS SHOULD BE FAMILIAR WITH THESE KEY PLAYERS AND IMPORTANT TERMS.

Introduction to DSRIP: *What is DSRIP?*

- DSRIP is short for **D**elivery **S**ystem **R**eform **I**ncentive **P**ayment (“DSRIP”) Program
- In April 2014, the State of New York (the “State”) finalized an agreement with the federal government to allow the State to reinvest \$8 billion of the \$17.1 billion in savings generated through Medicaid Redesign Team (“MRT”) reforms.
- DSRIP will promote community-level collaborations and focus on system reform, specifically a goal to achieve a 25 percent reduction in avoidable hospital use over five (5) years.
- Up to \$6.42 billion dollars are allocated to the DSRIP program with payouts based upon achieving predefined results in system transformation, clinical management and population health.

(See generally, New York State Department of Health (“SDOH”) DSRIP Overview, available at: http://www.health.ny.gov/health_care/medicaid/redesign/dsrp/overview.htm. See also generally, SDOH DSRIP Overview, available at: http://www.health.ny.gov/health_care/medicaid/redesign/dsrp/, last accessed on December 27, 2017.)

Introduction to DSRIP: *Who are the Key Players?* (1 of 3)

- ❖ **PPS** – Entities that are responsible for creating and implementing a DSRIP project are called “**Performing Provider Systems**,” abbreviated “**PPS.**” Performing Provider Systems are providers that form partnerships and collaborate in a DSRIP Project Plan. PPS include both major public hospitals and safety net providers, with a designated lead provider for the group, known as a PPS Lead. Safety net partners can include an array of providers: hospitals, health homes, skilled nursing facilities, clinics & FQHCs, behavioral health providers, community based organizations and others.
- ❖ **PPS Lead** – The PPS Lead is a safety net provider that serves as the convener of the performing provider system. The PPS Lead is responsible for
 - Overseeing the administration and operation of the PPS in accordance with the PPS governance structure
 - Serving as the recipient of funds from New York State
 - Distributing funds to the PPS partners in accordance with participation agreements and agreed-upon funds flow plans
- ❖ **PPS Partner** - The PPS Partner is a provider or other entity that has entered into a participation agreement with the PPS Lead to perform certain services and collaborate with a PPS in connection with the DSRIP program and/or one or more DSRIP projects.

Introduction to DSRIP: *Who are the Key Players?* (cont.)(2 of 3)

- ❖ **PPS Compliance Officer** – The PPS Compliance Officer is a PPS Lead employee who has been given responsibility for the day-to-day operation of the PPS’s compliance program. At NYC Health + Hospitals/OneCity Health, the PPS Compliance Officer is also the Senior Assistant Vice President and Chief Corporate Compliance Officer of NYC Health + Hospitals – Mr. Wayne A. McNulty.

- ❖ **Compliance Liaison** – The Compliance Liaison is an employee of a PPS Partner who has been given responsibility for carrying out the day-to-day operations of the Partner’s DSRIP compliance program, including working with the PPS Lead Compliance Officer.

(See generally, Delivery System Reform Incentive Payment (DSRIP) Program DSRIP Compliance Guidance 2015-01 - Revised Special Considerations for Performing Provider System (PPS) Leads’ Compliance Programs, available at:

https://www.omig.ny.gov/images/stories/compliance_alerts/20150901_DSRIP_CompGuidance_2015-01_Rev.pdf, last accessed December 27, 2017.)

Introduction to DSRIP: Who are the Key Players? (cont.)(3 of 3)

- ❖ **NYS Office of the Medicaid Inspector General (“OMIG”)** – The Office of the Medicaid Inspector General (“OMIG”) is an independent entity created within the New York State Department of Health (“SDOH”) to promote and protect the integrity of the Medicaid program in the State of New York (“the “State”). OMIG functions to enhance the integrity of the State Medicaid program by: (i) preventing and detecting fraudulent, abusive, and wasteful practices within the Medicaid program; (ii) recovering improperly expended Medicaid funds; and (iii) promoting high quality of patient care.
- ❖ **DSRIP Independent Assessor** – The DSRIP Independent Assessor is a vendor contracted by SDOH. The DSRIP Independent Assessor is responsible for conducting the ongoing monitoring of performance and reporting deliverables for the duration of the DSRIP program.

Introduction to DSRIP: *What is NYC Health + Hospitals/OneCity Health PPS?* (1 of 4)

- “OneCity Health” is NYC Health + Hospitals-sponsored Performing Provider System (“PPS”), formed under the auspices of DSRIP. As a PPS lead, OneCity Health is required to perform a community assessment of need, identify DSRIP strategies that are most consistent with addressing that need, develop a Project Plan incorporating those strategies, implement that Project Plan and monitor milestones and metrics to ensure the implementation is successful.
- OneCity Health is comprised of hundreds of healthcare providers, community-based organizations, and health systems, OneCity Health is the largest PPS in New York City.
- OneCity Health envisions the establishment of a welcoming, accessible, and integrated health delivery system that encourages, supports, strengthens, and protects a state of wellness and healthy living for all. Through this transformative effort, OneCity Health’s aim to demonstrably improve the health of all New Yorkers.

Introduction to DSRIP: *What is NYC Health + Hospitals/OneCity Health PPS?* (cont.)(2 of 4)

- All OneCity Health participants signed a DSRIP Master Services Agreement (“MSA”) with NYC Health + Hospitals as the PPS Lead, and HHC Assistance Corporation d/b/a OneCity Health Services, as the central services organization.



- The MSA is an important document that defines the foundational roles and responsibilities of OneCity Health participants, OneCity Health Services (CSO), and NYC Health + Hospitals, which are discussed in greater detail below in slides of this presentation.

Introduction to DSRIP: What is NYC Health + Hospitals/OneCity Health PPS? - *Overview of DSRIP Structure (cont.)*(3 of 4)

- OneCity Health is comprised of (i) four operating hubs in Brooklyn, the Bronx, Queens and Manhattan (boroughs where OneCity Health partners provide a full continuum of services); (ii) a committee-based governance structure; and (iii) a central services organization providing operational management, called OneCity Health Services.

- OneCity Health is governed by an executive committee and specialty committees with membership from partner organizations and NYC Health + Hospitals. Members are reviewed by a nominating committee that considers the incumbent's expertise in a particular discipline or representation of a specific interest relevant to the focus and responsibilities of the committee.

Introduction to DSRIP: What is NYC Health + Hospitals/OneCity Health PPS? - *Organizational Chart of DSRIP Governance (cont.)*(4 of 4)



Section 2: General Compliance Program Requirements

THIS SECTION PROVIDES INFORMATION ON THE LEGALLY REQUIRED ELEMENTS OF A COMPLIANCE PROGRAM AND WHY THE ESTABLISHMENT OF A COMPLIANCE PROGRAM IS BENEFICIAL.

ONECITY HEALTH PARTICIPANTS SHOULD BE FAMILIAR WITH THESE IMPORTANT TERMS AND REQUIREMENTS.

General Compliance Program Requirements: *What is Compliance?*

Compliance is an organizational culture that fosters the prevention, identification, and remediation of conduct that fails to comply with applicable law and/or an organization's own ethical and business standards of conduct.

(See U.S. Department of Health and Human Services Office of the Inspector General (OIG), Publication of the OIG Compliance Program Guidance for Hospitals, 63 Fed. Register 8987, 8988 (1998).)

General Compliance Program Requirements: *Why is the establishment of an effective compliance program beneficial?*

- An effective compliance program results in many benefits, including the following:
 - It demonstrates a commitment to corporate integrity and responsibility;
 - It decreases risk by preventing, identifying, and correcting unlawful and unethical behavior at an early stage;
 - It encourages staff and affiliated personnel to report potential compliance issues for internal query and remediation; and
 - Through early detection and reporting, it minimizes financial loss to regulatory bodies, taxpayers, and to OneCity Health.

- Additional benefits of an effective compliance program:
 - improve healthcare delivery;
 - enhance healthcare operations; and
 - reduce healthcare expenditures.

General Compliance Program Requirements: *Who is covered?*

- NYS Social Services Law § 363-d and 18 NYCRR Part 521.1 and 521.2 require certain providers to annually certify through the OMIG website that they have an “effective” compliance program.
- Certification is required of providers that:
 - Are subject to Public Health Law Articles 28 or 36 or Mental Hygiene Law Articles 16 or 31; or
 - Claim, order, bill, or receive at least \$500,000 within a 12 month period from Medicaid

Not all PPS Partners are required to have their own compliance programs under NYS law, but all must comply with the requirements of their PPS’s compliance programs. Some PPS Partners that were not previously required to have compliance programs under NYS law may become required to do so, by virtue of receipt of DSRIP payments that result in their meeting the \$500,000 threshold.

General Compliance Program Requirements: *What risk areas must be covered?*

- 18 NYCRR Part 521.3(a)(1-7) requires the following risk areas be addressed:
 - ✓ Billing and payments (e.g., claimed performance payments under DSRIP)
 - ✓ Quality of care and medical necessity determinations
 - ✓ Governance
 - ✓ Mandatory reporting
 - ✓ Credentialing processes; and
 - ✓ Other risk areas identified, e.g., privacy, conflicts, antitrust

- In addition, the following are required under specific sections of the Master Service Agreement:
 - Section 2.3.8 – This section provides that OneCity Health participants must conduct compliance programs as required by the State or NYC Health + Hospitals in connection with the DSRIP Program, including reporting to NYC Health + Hospitals/OneCity Health’s compliance officer any DSRIP-related compliance issues.

 - Section 2.3.9 – This section provides that OneCity Health participants must certify to OneCity Health Services and NYC Health + Hospitals, at such intervals and in such formats as OneCity Health Services shall reasonably determine, to confirm its full performance of its compliance obligations, it being understood that NYC Health + Hospitals and OneCity Health Services will explicitly rely upon such certifications in fulfilling their own compliance obligations and in giving their own certifications to the State.

General Compliance Program Requirements: *What are the eight required elements of an effective compliance program?* (1 of 2)

A required provider's compliance program shall include the following eight elements:

- (1) The establishment of written policies and procedures that describe compliance expectations as embodied in a code of conduct or code of ethics.
- (2) The designation of an employee vested with responsibility for the day-to-day operation of the compliance program;
- (3) The development and implementation of training and education programs for all affected employees and persons associated with the provider, including executives and governing body members, on compliance issues, expectations and the compliance program operation;
- (4) The establishment of communication lines to the responsible compliance position, as described above in paragraph (2) of this slide, that are accessible to all employees, persons associated with the provider, executives and governing body members, to allow compliance issues to be reported such communication lines shall include a method for anonymous and confidential good faith reporting of potential compliance issues as they are identified;

General Compliance Program Requirements: *What are the eight required elements of an effective compliance program?* (cont.)(2 of 2)

(5) The establishment and enforcement of disciplinary policies to encourage good faith participation in the compliance program by all affected individuals;

(6) The establishment and implementation of a system for routine identification of compliance risk areas specific to the provider type, for self-evaluation of such risk areas, including but not limited to internal audits and as appropriate external audits, and for evaluation of potential or actual non-compliance as a result of such self-evaluations and audits, credentialing of providers and persons associated with providers, mandatory reporting, governance, and quality of care of medical assistance program beneficiaries;

(7) The establishment and implementation of a system for responding to compliance issues as they are raised; for investigating potential compliance problems; responding to compliance problems as identified in the course of self-evaluations and audits; correcting such problems promptly and thoroughly and implementing procedures, policies and systems as necessary to 4 reduce the potential for recurrence; identifying and reporting compliance issues to the department or the office of Medicaid inspector general; and refunding overpayments;

(8) The establishment and enforcement of a policy of non-intimidation and non-retaliation for the good faith participation in the compliance program, including but not limited to reporting potential issues, investigating issues, self-evaluations, audits and remedial actions, and reporting to appropriate officials as provided in sections seven hundred forty and seven hundred forty-one of the labor law.

Section 3: Special Considerations for DSRIP Compliance

THIS SECTION PROVIDES: (I) INFORMATION ON THE SPECIAL CONSIDERATIONS AND REQUIREMENTS FOR PPS LEADS AS THEY DEVELOP THEIR COMPLIANCE PROGRAMS; (II) THE ELEMENTS OF A DSRIP COMPLIANCE PROGRAM; AND (III) HOW NYC HEALTH + HOSPITALS/ONECITY HEALTH COMPLIANCE PROGRAM MEETS ESTABLISHED COMPLIANCE PROGRAM REQUIREMENTS.

ONECITY HEALTH PARTICIPANTS SHOULD BE FAMILIAR WITH THESE IMPORTANT TERMS AND REQUIREMENTS.

Special Considerations for DSRIP Compliance - *September 2015 OMIG DSRIP Guidance*

On September 1, 2015, OMIG issued DSRIP Compliance Guidelines, which contain the following language:

- “PPS Leads... must...take all reasonable steps to ensure that Medicaid funds distributed as part of the DSRIP program are not connected with fraud, waste or abuse. It is reasonable for a PPS Lead to consider its [PPS Partners’] program integrity systems when [doing so].”
- “PPS Leads can focus their compliance program risk assessments on those risks specifically associated with the current phase of the DSRIP program and payments made pursuant to it.”
- “PPS Leads are not responsible for network providers’ individual compliance programs that may be required in connection with their status as a serving provider. Likewise PPS Leads cannot be responsible for how network providers use their respective DSRIP distributions, but PPS Leads must have adequate processes in place...to be able to identify when network providers obtain DSRIP distributions in a way that is inconsistent with approved DSRIP project plans.”

(See generally, Office of the Medicaid Inspector General Delivery System Reform Incentive Payment (“DSRIP”) Program DSRIP Compliance Guidance 2015-01 –revised – Special Considerations for Performing Provider System (“PPS”) Leads’ Compliance Program available at: https://www.omig.ny.gov/images/stories/compliance_alerts/20150901_DSRIP_CompGuidance_2015-01_Rev.pdf)

The upcoming slides:

- Describe in further detail the DSRIP specific compliance requirements, including the DSRIP specific eight (8) compliance program elements; and
- Describe how NYC Health + Hospitals/OneCity Health satisfies: (i) the DSRIP specific eight (8) compliance program elements; and (ii) its overall compliance program obligations.

Special Considerations for DSRIP Compliance – *DSRIP Compliance Program Elements*

Element 1: PPS Leads must have policies and procedures that describe compliance expectations specifically related to the compliance issues involving DSRIP funds.

- OneCity Health performing providers must comply with [NYC Health + Hospitals Principles of Professional Conduct](#) (“POPC”), which can be accessed by clicking on the preceding link, which may be accessed by clicking the highlighted portion above. The POPC sets forth the expectation that all covered parties will conduct business in a lawful and ethical manner. It provides guidance on the prohibitions against improper billing, the submission of improper claims including the misuse of DSRIP funds, the making of false statements, illegal kickbacks, conflicts of interest, the improper disclosure of confidential patient information and other compliance topics.
- Each DSRIP partner will give written certifications to NYC Health + Hospitals/OneCity Health at such intervals and in such format as NYC Health + Hospitals/OneCity Health shall reasonably determine, to confirm their full performance of their compliance obligations as required by the State or NYC Health + Hospitals/OneCity Health.
- On September 26, 2017, NYC Health + Hospitals distributed a [memorandum](#), which can be accessed by clicking on the preceding link, to all OneCity Health participants regarding the Deficit Reduction Act of 2005, which informed them of NYC Health + Hospitals’ policies prohibiting fraud, waste, and abuse and relevant federal and state laws relating to false claims and statements and whistleblower protections from retaliation.

Special Considerations for DSRIP Compliance – *DSRIP Compliance Program Elements*

Element 2: The Compliance Officer must be an employee of NYC Health + Hospitals (the PPS lead) and shall periodically report directly to the governing body on activities of the compliance program.

- The NYC Health + Hospitals’ Office of Corporate Compliance (“OCC”) has assumed DSRIP-related compliance responsibilities.
- NYC Health + Hospitals’ Chief Corporate Compliance Officer (“CCO”) is also the CCO of OneCity Health. The CCO of OneCity Health is Wayne A. McNulty.
- The CCO reports quarterly to the NYC Health + Hospitals Board of Directors and has the authority to request the Chairperson to call a meeting of the Board to consider any finding or conclusion requiring their attention.

Special Considerations for DSRIP Compliance – *DSRIP Compliance Program Elements*

Element 3: The PPS Lead is responsible for training and education of all affected employees, persons associated with the provider (i.e., PPS Lead), its executives and its governing body members on compliance issues and expectations. “Persons associated with the provider” include performing providers within the PPS network who are or may be eligible to receive DSRIP funds.

- NYC Health + Hospitals/OneCity Health has made training and education materials available to OneCity Health participants for use at their discretion in providing compliance training for its Workforce Members.
- The Master Services Agreement (Sections 2.3.8 and 2.3.9) signed by those who are involved with the DSRIP program as well as the DSRIP Compliance Plan requires them to certify that they have trained their employees and other personnel regarding compliance related matters.
- General compliance training, including DSRIP-related compliance training, is provided to NYC Health + Hospitals Workforce Members.

Special Considerations for DSRIP Compliance – *DSRIP Compliance Program Elements*

Element 4: The PPS Lead must establish a process of reporting compliance issues to its Compliance Officer which must include an anonymous and confidential method of reporting.

- All NYC Health + Hospitals/OneCity Health Workforce Members as well as OneCity Health participants are required to report DSRIP-related compliance concerns to the Office of Corporate Compliance. All reports made are treated confidentially to the extent permitted by applicable law.
- Those wishing to make an anonymous report can call the OneCity Health/DSRIP Help Line at **844-805-0105** or online at <https://helphhc.alertline.com/gcs/welcome> and select “NYC Health + Hospitals OneCity Health” as the location of the issue.

Special Considerations for DSRIP Compliance – *DSRIP Compliance Program Elements*

Element 5: The PPS Lead’s policies and procedures must include disciplinary policies and procedures to encourage good faith participation in the compliance program by all affected individuals.

- OMIG recommends that PPS Leads coordinate with their network of performing providers to support implementation of the policies and procedures throughout the network.
- NYC Health + Hospitals/OneCity Health workforce members and OneCity Health participants are required to comply with the disciplinary policies set forth in NYC Health + Hospitals’ Principles of Professional Conduct.

Special Considerations for DSRIP Compliance – *DSRIP Compliance Program Elements*

Element 6: A PPS Lead is required to develop/implement a system for routine identification of compliance risk areas. To meet this obligation, NYC Health + Hospitals/OneCity Health has accomplished the following:

- NYC Health + Hospitals/OneCity Health and the OCC has:
 - ✓ conducted periodic DSRIP specific risk assessments;
 - ✓ utilized its Principals of Professional Conduct practices to encourage and protect good faith reporters who raise issues internally;
 - ✓ considered issues raised in calls to its Compliance Hotline as potential areas of risk; and
 - ✓ considered issues raised in calls to the OneCity Health/DSRIP Compliance Helpline as potential risk areas.

As it relates to individuals or entities excluded from participation in Federal or State healthcare programs, PPS Leads and all providers should perform monthly exclusion screening. If an excluded party is identified, NYC Health + Hospitals Office of Corporate Compliance should be notified.

(See generally, NYC Health + Hospitals/OneCity Health DSRIP Compliance Plan December 31, 2015, § III DSRIP Compliance Program Elements. See also, Element 6 – Office of the Medicaid Inspector General Delivery System Reform Incentive Payment (“DSRIP”) Program DSRIP Compliance Guidance 2015-01 –revised – Special Considerations for Performing Provider System (“PPS”) Leads’ Compliance Program available at: https://www.omig.ny.gov/images/stories/compliance_alerts/20150901_DSRIP_CompGuidance_2015-01_Rev.pdf See also, FAQs, available at: https://www.omig.ny.gov/images/stories/compliance_alerts/20150715_dsrp_faqs.pdf)

Special Considerations for DSRIP Compliance – *DSRIP Compliance Program Elements*

Element 7: The PPS Lead must develop and implement a system for responding to compliance issues that are raised. A PPS Lead should consider its own willful misuse of DSRIP funds, or false statements made by a PPS Lead or its network providers to obtain DSRIP funds, as examples of compliance issues. The PPS Lead’s system must also include a method for prompt corrective action and refunding overpayments.

- NYC Health + Hospitals/OneCity Health has advised its Workforce Members and PPS Partners of their obligation to report and address compliance issues identified.
- NYC Health + Hospitals/OneCity Health directly reviews or investigates DSRIP-related compliance issues or delegates that duty to the involved OneCity Health participant, who would then be responsible for reporting results of their investigation back to OneCity Health.

Note that, OMIG considers “overpayments” to include DSRIP payments that are issued based upon data that DOH and the DSRIP Independent Assessor subsequently determine to be incorrect or falsified, regardless of the reason. Overpayments are expected to be recovered through DOH’s established DSRIP protocols.

Special Considerations for DSRIP Compliance – *DSRIP Compliance Program Elements*

Element 8: PPS Leads must develop a policy of non-intimidation and non-retaliation for good faith participation in the compliance program. PPS Leads will also need to work with their network partners to support compliance with this requirement.

- NYC Health + Hospitals/OneCity Health has informed its Workforce Members and OneCity Health participants of the prohibitions against whistleblower retaliation as contained in the Principles of Professional Conduct and the annual DRA Memorandum.

Section 4: Fraud, Waste and Abuse and Relevant Laws

THIS SECTION WILL PROVIDES INFORMATION ON FRAUD, WASTE AND ABUSE AND RELEVANT FEDERAL LAWS AS IT RELATES TO COMPLIANCE.

ONECITY HEALTH PARTICIPANTS SHOULD BE FAMILIAR WITH THESE IMPORTANT TERMS AND LAWS.

Fraud, Waste, and Abuse and Relevant Laws - *Definitions of the terms Fraud, Waste & Abuse*

“*Fraud* means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person.”

(See 42 CFR § 455.2.)

Fraud, Waste, and Abuse and Relevant Laws - *Examples of Fraud*

Fraud under the False Claims Act consists, among other things, of false statements or misrepresentations made in order to receive payments that are not otherwise deserved. Some examples of fraud are:

- Billing for services not furnished;
- Misrepresenting a diagnosis to justify payment;
- Unbundling or "exploding" charges;
- Falsifying certificates of medical necessity, plans of treatment, and medical records to justify payment;
- Billing for a service not furnished as billed (up-coding); and
- Providing information that the provider knows to be false or incorrect.

(See HHS, Medicare Definition of Fraud, (Mar. 2008) <http://corporate.findlaw.com/law-library/medicare-definition-of-fraud.html>; CMS Medicare Program Integrity Manual, Chapter 4, § 4.2.1; see also OIG Compliance Program Guidance for Hospitals (1998) 63 FR at 8988.)

Fraud, Waste, and Abuse and Relevant Laws - *Definitions of the terms Fraud, Waste & Abuse*

Waste means the extravagant, careless, or needless expenditure of funds or consumption of property. The term includes improper practices not involving prosecutable fraud or rising to the level of abuse.

Fraud, Waste, and Abuse and Relevant Laws - *Definitions of the terms Fraud, Waste & Abuse*

Abuse is not fraud because there is no intent to deceive. The term “abuse” is used instead to describe those healthcare practices that, while not intentionally fraudulent, are nonetheless inconsistent “with the goals of providing patients with services that are medically necessary, meet professionally recognized standards, and are fairly priced.”

(See CMS Medicare Fraud & Abuse: Prevention, Detection, and Reporting, p.2 (ICN006827)(October 2011) available at: http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads//Fraud_and_Abuse.pdf, last accessed December 27, 2017.)

Fraud, Waste, and Abuse and Relevant Laws – *Examples of Abuse*

Abuse adds to patient costs, undermines the quality of patient care, and needlessly drains resources from the Medicare and Medicaid programs. Some examples of abuse are:

- Misusing codes on a claim;
- Charging excessively for services or supplies; and
- Billing for services that were not medically necessary.

Fraud, Waste, and Abuse and Relevant Laws

The following eight slides contain information about important Federal laws that govern the prohibition of fraud, waste, and abuse. OneCity Health participants should be familiar with these laws.

Fraud, Waste, and Abuse and Relevant Laws

The Following Federal Laws are Important to Understanding OneCity Health's Compliance Requirements:

- Deficit Reduction Act of 2005;
- False Claims Act;
- The Physician Self-Referral Law (the “Stark Law”);
- Medicare and Medicaid Patient Protection Act (the “Anti-Kickback Statute”);
- Criminal Health Care Fraud Statute;
- Civil Monetary Penalties Law; and
- The Exclusion Authorities.

Fraud, Waste, and Abuse and Relevant Laws - *Deficit Reduction Act*

- The Deficit Reduction Act of 2005 (“DRA”) requires NYC Health + Hospitals to inform its Workforce Members, contractors, agents, and other parties, including OneCity Health participants about NYC Health + Hospitals internal policies prohibiting fraud, waste, and abuse; Federal and State laws prohibiting false claims and statements; and whistleblower protection from retaliation.
- To meet its requirements under the DRA, a DRA Memorandum was sent to all NYC Health + Hospital Workforce Members, affiliates, vendors, and OneCity Health participants in September 26 2017. The notice contained a link to the NYC Health + Hospitals’ Principles of Professional Conduct (“POPC”), which by its terms is applicable to all OneCity Health participants. The POPC prohibits the misuse of DSRIP funds.

Fraud, Waste, and Abuse and Relevant Laws - *False Claims Act* (“FCA”)

- FCA protects the federal government from being overcharged or sold substandard goods or services. FCA prohibits making a false record or statement to get a false claim paid by the government; conspiring to have a false or fraudulent claim paid by the government; and causing someone else to submit a false claim.
(See 31 U.S.C. § 3729(a)(1-3); see also, generally, 31 U.S.C. §§ 3729-3733)
- FCA imposes civil liability on any person who *knowingly* submits, or causes to be submitted, a false or fraudulent claim to the Federal Government. The “*knowing*” standard includes acting in deliberate ignorance or reckless disregard of the truth related to the claim. (See *id.* at § 3729(a)(1-3), (b)(1)(A-B))

Fraud, Waste, and Abuse and Relevant Laws - *Criminal Health Care Fraud Statute*

In addition to civil liability under FCA, the Criminal Health Care Fraud Statute, in relevant part, makes it a federal crime to knowingly and willfully execute, or attempt to execute, a scheme or artifice to:

- defraud any health care benefit program; or
- obtain by means of false or fraudulent pretenses, representations, or promises any ... money or property ... owned by, or under the custody or control of, any health care benefit program in connection with the delivery of or payment for health care benefits, items, or services.

(See 18 U.S.C. § 1347.)

Fraud, Waste, and Abuse and Relevant Laws - *Civil Monetary Penalties (“CMP”) Law*

The CMP law allows the OIG to seek civil monetary penalties for a variety of fraud, waste and abuse violations.

- Penalties range from \$10,000 to \$50,000 per violation.
- Examples include violating the Anti-Kickback Statute or submitting a claim that the person knows or should know is for an item or service that was not provided as claimed or is false or fraudulent.

(See 42 CFR § 1320a-7a (1) (B) and (10).)

Fraud, Waste, and Abuse and Relevant Laws - *The Stark Law*

- The Stark Law prohibits making a referral of a Medicare patient to a provider for a “covered service” by a referrer who has a prohibited “financial interest” in the provider, unless certain exceptions are met.
- A "financial relationship" is defined to include either a direct or indirect ownership or investment interest in an entity through equity, debt or other means, or a direct or indirect compensation arrangement with an entity.

(See 42 U.S.C. § 1395nn(a)(1)(A) and (2)(A) and (B).)

Fraud, Waste, and Abuse and Relevant Laws - *The Medicare and Medicaid Patient Protection Act (the "Anti-Kickback Statute")*

Provides for criminal penalties for certain acts impacting Medicare and state health care (e.g., Medicaid) reimbursable services. 42 CFR § 1320a-7b(b), in relevant part, makes it a crime for anyone who:

“(1) knowingly and willfully solicits or receives any remuneration (including any kickback, bribe or rebate) directly or indirectly, overtly or covertly, in cash or in kind -

(A) in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under [Medicare] or a State health care program, or

(B) in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under [Medicare] or a State health care program.”

Fraud, Waste, and Abuse and Relevant Laws - *The Exclusion*

Authorities

- No Federal Health Care Program (*e.g.*, Medicaid, Medicare) payment may be made for any items or services: (i) furnished by an excluded person (*i.e.*, any individual or entity); or (ii) at the medical direction or on the prescription of an excluded person.
- Exclusions may be mandatory (OIG is required to exclude) or permissive (OIG may exclude)
 - ✓ Generally, mandatory exclusions stem from Federal Health Program-related crimes, patient abuse, felony healthcare fraud, or felony convictions related to controlled substances
 - ✓ Generally, permissive exclusions may stem from losing a state license to practice, failing to repay student loans, conviction of certain misdemeanors, or failing to provide quality of care
- There are three main exclusion lists: (1) HHS/OIG List of Excluded Individuals/Entities (accessible at: <https://oig.hhs.gov/exclusions/>) (2) the New York Office of Medicaid Inspector General Medicaid Terminations and Exclusions (accessible at: <https://www.omig.ny.gov/search-exclusions>) and (3) System for Award Management (SAM) (accessible at: <https://www.sam.gov/portal/SAM/#1>). If a person or entity is on one or more of these lists, that person or entity cannot participate in any Federal or State Government programs, including Medicare and Medicaid. Additionally, excluded persons or entities may not receive DSRIP funds.

Section 5: Reporting Compliance Issues

THIS SECTION PROVIDES INFORMATION ON HOW TO REPORT COMPLIANCE ISSUES OR CONCERNS TO NYC HEALTH + HOSPITALS/ONECITY HEALTH OFFICE OF CORPORATE COMPLIANCE.

Reporting Compliance Issues: *How can OneCity Health participants report a DSRIP-related compliance issue or concern?*

NYC Health + Hospitals/OneCity Health has established the following confidential ways of reporting DSRIP-related compliance issues to the NYC Health + Hospitals/OneCity Health Compliance Officer, including by anonymously contacting a compliance helpline:

- Speak with the Compliance Liaison within the OneCity Health participant's organization.
- Call the NYC Health + Hospitals/OneCity Health DSRIP Compliance Helpline at 1-844-805-0105.
- Contact OneCity Health Chief Compliance Officer Wayne A. McNulty at: wayne.mcnulty@nychhc.org or (646) 458-5632.
- Mail to: NYC Health + Hospitals, Office of Corporate Compliance, 160 Water Street, Suite 1129, New York, NY 10038
- Fax to: (646) 458-5624
- Email to: COMPLIANCE@nychhc.org
- Compliance questions or concerns that are not related to OneCity Health should be reported to the Compliance Officer of the OneCity Health participant.

THANK YOU for taking the time to complete this compliance training and education presentation on the DSRIP program.

Should you have any questions regarding the content of this presentation, please contact Kevin Rogan, Senior Executive Corporate Compliance Officer within the NYC Health + Hospitals/OneCity Health Office of Corporate Compliance, at (646) 458-5644, or the NYC Health + Hospitals/OneCity Health DSRIP Compliance Helpline at 1-844-805-0105.