



**NUVANCE HEALTH**  
**COMPLIANCE AND ETHICS PROGRAM**

**CHARTER**

**Updated May 31, 2023**



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## Compliance and Ethics Program Charter<sup>1</sup>

### I. PURPOSE OF THE COMPLIANCE AND ETHICS PROGRAM

#### Overall Purpose

1) The purpose of the Nuvance Health Compliance and Ethics Program (the “Compliance Program” or the “Program”) is to establish an organizational culture throughout Nuvance Health that promotes the prevention, detection, and resolution of conduct that fails to comply with:<sup>2</sup>

- Applicable Federal and State administrative, civil, and criminal law;
- The requirements of Federal healthcare programs and private payors; and
- Nuvance Health’s standards of ethical and business conduct and the implementing policies and procedures thereof.

#### Facilitation of Guidance

2) The Program provides guidance to the Nuvance Health Board of Directors (the “Nuvance Health Board”), senior management, physicians, clinicians, researchers, allied health professionals, administrators, support staff, personnel, and other Covered Individuals (as that term is defined in ¶ 4 of § III below) regarding the efficient management and operation of Nuvance Health facilities, units, and entities.<sup>3</sup>

### II. SCOPE

3) The Program governs compliance implementation, monitoring, and oversight activities in all Nuvance Health facilities, units and entities including, without limitation, the following:

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<sup>1</sup> Throughout this document the subject Compliance and Ethics Program Charter is referred to as “this Charter” or “the Charter.”

<sup>2</sup> See U.S. Department of Health and Human Services, Office of Inspector General (“OIG”), *Publication of the OIG Compliance Program Guidance for Hospitals*, 63 Fed. Reg. 8987, 8988, § [I] (1998). Note, for purposes of the Charter, the term “law” shall mean all applicable criminal, civil, and administrative laws, rules, codes, and regulations and corresponding applicable case law. For purposes of this Charter, the term “State” (which includes any local government within said State) shall mean: (i) the State of New York and the State of Connecticut; (ii) any State in which Nuvance Health is an enrolled provider in said State’s Medicaid program and due to said enrollment Nuvance Health is required to comply with Federal healthcare program requirements applicable to such enrollment; and (iii) any State that has promulgated laws that, upon the consultation and legal counsel of the Nuvance Health Office of Legal Affairs, it has been determined that such laws are consistent with the U.S. Constitution and legally apply to Nuvance Health.

<sup>3</sup> See 63 Fed. Reg. 8987, 8988, § [I].



- Nuvance Health;
- Health Quest Systems, Inc. (“HQSI”);
- Western Connecticut Health Network, Inc. (“WCHN”);
- Danbury Hospital and its New Milford campus;
- Eastern New York Medical Services, P.C.;
- Health Quest Home Care, Inc.;
- Nuvance Health Medical Practice, P.C. (“NHMP”);
- Hudson Valley Cardiovascular Practice, P.C. (“the Heart Center”);
- Vassar Health Quest Medical Practice of Connecticut, Inc.;
- Northern Dutchess Hospital;
- Northern Dutchess Residential Health Care Facility, Inc. (“Thompson House”);
- The Norwalk Hospital Association;
- Putnam Hospital;
- Sharon Hospital;
- Taconic IPA, Inc. (“Taconic ACO”)
- Vassar Brothers Medical Center;
- Western Connecticut Home Care Inc.;
- Western Connecticut Health Network Physician Hospital Organization ACO, Inc.;
- Nuvance Health Medical Practice CT, Inc. (“NHMP-CT”); and
- The Foundations of Nuvance Health.



### III. APPLICABILITY

4) The Program applies to all Nuvance Health workforce members,<sup>4</sup> business affiliates, and agents (hereinafter collectively referred to as “Covered Individuals”).

5) For purposes of this Charter, workforce members shall include any of the following individuals at Nuvance Health:

- Members of the Nuvance Health Board and the boards of any Nuvance Health related entity listed in Section II above;
- President/Chief Executive Officer;<sup>5</sup>
- Administrators;<sup>6</sup>
- Managers;
- Officers;<sup>7</sup>
- Employees;
- Affiliates;
- Medical Staff Members;
- Appointees;
- Volunteers;
- Personnel;
- Interns;
- Students;
- Trainees;
- Any individual whose conduct is under the direct control of Nuvance Health, whether or not they are paid by Nuvance Health;

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<sup>4</sup> Applies to all temporary and permanent workforce members who function, onsite, remotely or any combination thereof, in a full time, part time or per diem role at a Nuvance Health facility, unit or entity.

<sup>5</sup> 18 NYCRR § 521-1.2[b][1].

<sup>6</sup> 18 NYCRR § 521-12[b][1].

<sup>7</sup> 18 NYCRR § 521-1.2 [b][1].



6) For purposes of this Charter, Business Affiliates shall include any non-workforce member contractor, independent contractor, vendor, person, subcontractor or third-party, who or that, in acting on behalf of Nuvance Health:

- Delivers, furnishes, prescribes, directs, orders, authorizes, or otherwise provides Federal healthcare program items and services;
- Performs billing or coding functions;<sup>8</sup>
- Monitors the healthcare provided by Nuvance Health;<sup>9</sup> or
- Contributes to Nuvance Health's entitlement to payment under Federal healthcare programs.<sup>10</sup>
- Is affected by this Charter or any risk area listed in ¶¶ 42 and 43 of § X, *infra*, based on, and limited to the extent that the Charter or one or more of the risk areas are relevant and applicable to the Business Affiliates's interaction with, or performance of their role, functions, and responsibilities or provision of contracted services at, Nuvance Health; and

7) For purposes of this Charter, agents are individuals or entities that have entered into an agency relationship with Nuvance Health. Agents fall under the category of either Workforce Member or Business Affiliates depending on their role, functions, and responsibilities.

8) All contracts, memoranda of understanding or other forms of agreements (hereinafter "contracts") between Nuvance Health and a contractor, agent, subcontractor, independent contractor, vendor, or third-party (collectively "Contractor"), whether such contractor is a workforce member or a business affiliate, shall specify, at the minimum, the following:

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<sup>8</sup> See CMS DRA 6032 – Employee Education About False Claims Recovery – Frequently asked Questions, p.6 (3/20/07), (available at: <https://downloads.cms.gov/cmsgov/archived-downloads/SMDL/downloads/smd032207att1.pdf> ) (last accessed on 5/16/23). *see also* HHS OIG (citing CMS) available at: [https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/SMD121306\\_124.pdf](https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/SMD121306_124.pdf) (last accessed on 5/16/23); CMS SMDL#06-024, Center for Medicaid and State Operations (12-6-06) (available at: <https://downloads.cms.gov/cmsgov/archived-downloads/SMDL/downloads/SMD121306.pdf> ) (last accessed on: 5/16/23).

<sup>9</sup> See CMS DRA 6032 – Employee Education About False Claims Recovery – Frequently asked Questions, p.6 (3/20/07), (available at: <https://downloads.cms.gov/cmsgov/archived-downloads/SMDL/downloads/smd032207att1.pdf> ) (last accessed on 5/16/23). *see also* HHS OIG (citing CMS) available at: [https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/SMD121306\\_124.pdf](https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/SMD121306_124.pdf) (last accessed on 5/16/23); CMS SMDL#06-024, Center for Medicaid and State Operations (12-6-06) (available at: <https://downloads.cms.gov/cmsgov/archived-downloads/SMDL/downloads/SMD121306.pdf> ) (last accessed on: 5/16/23).

<sup>10</sup> See N.Y State Office of the Medicaid Inspector General, *Compliance Program Review Guidance, New York State Social Services Law Section 363-d and Title 18 New York Codes of Rules and Regulations Part 521*, Definitions: Affected Individuals, p.3 (2016).



- All Contractors:
  - Shall be bound by applicable Federal and State law, as well as Federal healthcare program requirements related to the contracted service;<sup>11</sup>
  - Must perform their obligations and duties under the contract in a safe and effective manner;<sup>12</sup>
  - Shall face possible penalties or other corrective or mitigating action for failing to fulfill their obligations and responsibilities under the contract;
  - As set forth in § XVIII below, shall not at any time during the term of agreement with Nuvance Health be or become an excluded provider or ineligible person;<sup>13</sup> or appear on the Federal General Services Administration debarment list or the OFAC sanction list; and
  - Where applicable, satisfy all Nuvance Health information security standards.
  
- Contractors who are workforce members, and individuals provided by Contractors to serve as workforce members, shall be bound by:
  - Nuvance Health's standards of conduct, the Charter, and Program requirements;
  - All Nuvance Health's policies and procedures including, without limitation, all policies and procedures governing: (i) fraud, waste, and abuse prevention; (ii) prohibition on the submission of false claims; (iii) whistleblower protection and anti-retaliation for the good faith participation in the Program; and (iv) the mandatory reporting compliance issues, concerns or violations.<sup>14</sup>
  
- Contractors that are Business Affiliates are bound by:
  - Nuvance Health's standards of conduct and the Charter;
  - Nuvance Health's policies and procedures governing: (i) fraud, waste, and abuse prevention; (ii) prohibition on the submission of false claims; (iii) whistleblower protection and anti-retaliation for

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<sup>11</sup> See 42 CFR § 482.12 [e]; see also CMS State Operations Manual, Appendix A – Survey Protocol, Regulations and Interpretive Guidelines for Hospitals, A-0083, § 482.12 [e] [2-21-20] (available at: [https://www.cms.gov/regulations-and-guidance/guidance/manuals/downloads/som107ap\\_a\\_hospitals.pdf](https://www.cms.gov/regulations-and-guidance/guidance/manuals/downloads/som107ap_a_hospitals.pdf)) (last accessed on: April 19, 2023); 10 NYCRR §§ 400.2, 400.4 [a][3-4] & 405.2 [c], [h]; see also, generally, 42 CFR § 482.11 [a]; 10 NYCRR § 405.2 [d][2].

<sup>12</sup> 42 CFR § 482.12 [e][1].

<sup>13</sup> 18 NYCRR § 521-1.4 [g][3], [g][3][ii].

<sup>14</sup> See, generally, 10 NYCRR § 405.4 [a][2].



- the good faith participation in the Program; (iv) the mandatory reporting compliance issues, concerns or violations; and
- Other Program requirements (*e.g.*, policies, procedures, standards, *etc.*) if the Business Affiliate is affected by such requirements or any risk area listed in ¶¶42 and 43 of § X, *infra*, based on, and limited to the extent that said requirements or one or more of the risk areas are relevant and applicable to the Business Affiliates's interaction with, or performance of their role, functions, and responsibilities or provision of contracted services at, Nuvance Health.
- All Contractors who are Workforce Members or Business Affiliates shall be bound by disciplinary provisions that include the imposition of disciplinary measures, up to and including, termination of contract or other affiliation with Nuvance Health, for failing to adhere to applicable Federal and State law, Nuvance Health's standards of conduct, the Charter, and their Program-related contractual requirements listed in bullets 1-3 of this paragraph.<sup>15</sup>

#### IV. COMPLIANCE PROGRAM BENEFITS AND GOALS

##### Benefits

9) The compliance program firmly demonstrates to all Covered Individuals and other Nuvance Health stakeholders (*e.g.*, community leaders, patients, regulatory oversight agencies) Nuvance Health's commitment to honesty, corporate responsibility, and ethical conduct.<sup>16</sup> Some benefits of this commitment include the following:<sup>17</sup>

- The identification and prevention of criminal, unethical, and unprofessional conduct;
- The establishment of a centralized resource for the dissemination of information related to: (i) statutes, regulations, and other legal requirements; (ii) fraud, waste, and abuse initiatives and prohibitions; (iii) Federal healthcare program requirements; and (iv) internal standards of conduct and associated policies;
- Improvement of patient quality of care; and
- The establishment of a culture and methodology for Covered Individuals to report compliance concerns, issues, and Program violations.

<sup>15</sup> 18 NYCRR 521-1.3 [c][2-3]; 18 NYCRR 521-1.4 [f]

<sup>16</sup> See 63 Fed. Reg. 8987, 8988, § [I][A].

<sup>17</sup> See *id.*





### Compliance Program Goals:

- 10) The goals of the Program include, without limitation:<sup>18</sup>
- Detecting, deterring, and reducing incidents of illegal, unprofessional, and unethical conduct, and fraud, waste, and abuse;
  - Enhancing Nuvance Health’s operations and the quality of healthcare delivery; and
  - Reducing healthcare costs.

## V. CORPORATE COMPLIANCE OFFICE

11) The Nuvance Health Corporate Compliance Office shall consist of the Compliance, Privacy, and Internal Audit divisions and shall be headed by the Chief Compliance, Audit, and Privacy Officer (“CCAPO”).

12) The Internal Audit division of the Compliance Office shall operate as defined in the Internal Audit Charter, last updated, and subsequently approved and adopted by the Audit and Compliance Committee on July 29, 2022.<sup>19</sup> (**Note:** The Internal Audit Charter is annexed hereto for reference purposes as **Exhibit** “1.”).

## VI. ROLE OF THE CHIEF COMPLIANCE, AUDIT, AND PRIVACY OFFICER

### Overview

13) The CCAPO serves as Nuvance Health’s principal compliance, audit, and privacy officer. In this capacity, the CCAPO: (i) serves as the focal point of the Program; and (ii) is responsible for the day-to-day oversight of the Program, as well as overseeing all aspects of corporate responsibility to ensure compliance with applicable laws and regulations including implementing enterprise-wide programs to ensure compliance.<sup>20</sup> This includes performing compliance and enterprise-wide risk assessments, developing training materials and monitoring tools, performing compliance audits, and presenting compliance and enterprise risk reports to the Executive Compliance Committee (“ECC”) and the Audit and Compliance Committee of the Nuvance Health Board of Directors (“Audit and Compliance Committee”) and, where necessary, the Nuvance Health Board of Directors (“Nuvance Health Board”).

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<sup>18</sup> See OIG, *OIG Supplemental Compliance Program Guidance for Hospitals*, 70 Fed. Reg. 4858, 4859 § [I][A], (2005).

<sup>19</sup> The Internal Audit Charter was last renewed and subsequently approved and adopted by the Audit and Compliance Committee of the Nuvance Health Board of Directors on July 29, 2022.

<sup>20</sup> 18 NYCRR § 521-1.4 [b] (providing that the Chief Compliance Officer “is the focal point for the required provider’s compliance program and is responsible for the day-to-day operation of the compliance program.”)



14) The CCAPO also oversees the internal audit function, which may be operated internally, co-sourced, outsourced or any one or more combinations thereof. Regardless of the methodology utilized to fulfill internal audit functions, duties, and initiatives, the CCAPO is responsible for ensuring that the internal audit function: (i) proactively reviews the adequacy and effectiveness of Nuvance Health’s internal controls; (ii) performs an annual risk assessment; and (iii) reports audit results to senior management, the ECC, and the Audit and Compliance Committee.

15) The CCAPO shall be responsible for implementing compliance initiatives designed to ensure compliance with Federal health care program requirements and the obligations under the Corporate Integrity Agreement between the U.S. Department of Health and Human Services Office of Inspector General (“OIG”) and Health Quest Systems, Inc., NHMP (formerly Health Quest Medical Practice, P.C.), Health Quest Urgent Medical Care Practice, P.C., and Health Quest Home Health Care, Inc. (“Health Quest”) (collectively “Health Quest CIA”).

16) In addition to the above, the CCAPO oversees the Nuvance Health privacy function (which includes oversight of the HIPAA Privacy and Security programs). With regard to Nuvance Health facilities, units, and entities that are deemed covered entities under HIPAA regulations, the CCAPO is responsible for designating: (i) the HIPAA Privacy and Security officials, as those roles are set forth under the HIPAA Privacy Rule at 45 CFR § 164.530 [a][1][i], and the HIPAA Security Rule at 45 CFR § 164.308 [a][2], respectively; and (ii) pursuant to the Privacy Rule at 45 CFR § 164.530 [a][1][ii] and 45 CFR § 164.520, the individual (or the division within the Corporate Compliance Office) to receive HIPAA-related complaints and provide information related to Nuvance Health’s HIPAA Notice of Privacy Practices, respectively.<sup>21</sup>

17) The CCAPO shall serve as Chair of the ECC, as set forth below in ¶ 25 of § VII, *infra*.

### Reporting

18) The CCAPO: (i) directly reports administratively to the President and Chief Executive Officer of Nuvance Health and functionally to the Audit and Compliance Committee; (ii) makes periodic reports regarding compliance matters directly to the Audit and Compliance Committee as needed but in no event less than on a quarterly basis; (iii) is authorized to report compliance matters directly to the Audit and Compliance Committee, as well as to the Nuvance Health Board where necessary, at any time; and (iv) is accountable to President and Chief Executive Officer and the Audit and Compliance Committee.

19) The CCAPO shall at no time:

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<sup>21</sup> Note: The Chief Information Security Officer (“CISO”) within the Information Technology Office, in consultation with the CCAPO, shall serve as the employee responsible for coordinating the Nuvance Health security program as set forth under N.Y. General Business Law §§ 899-bb [2][b][ii] & [2][b][ii][A][i]. The CISO is appointed by Nuvance Health’s Chief Information Officer.



- Be subordinate to the General Counsel or the Chief Financial Officer;
- Be assigned to any duty, role or responsibility that hinders the CCAPO from carrying out their responsibilities and ethical obligations under the Program as outlined in this Charter, professional compliance and internal audit standards, the Health Quest CIA , or applicable Federal and State law.<sup>22</sup>

Major Responsibilities:

- 20) The CCAPO's responsibilities include, without limitation the following:
- Overseeing and monitoring the adoption, implementation and maintenance of the compliance program;<sup>23</sup>
  - Evaluating the effectiveness of the Program;<sup>24</sup>
  - Drafting and implementing a compliance work plan that, at the minimum, meets the following requirements:<sup>25</sup>
    - Is updated at least annually or more frequently where necessary to ensure consistency with changes in applicable Federal or State law;
    - Outlines the Nuvance Health's strategy for satisfying the seven (7) elements of the Program, as summarized in ¶¶ 34-40 below, for the upcoming year
  - Reviewing and promptly revising the Program as warranted based on:<sup>26</sup>
    - organizational experience; and
    - changes in applicable Federal and State laws and associated policies and standards
  - Implementing enterprise-wide programs, policies, and procedures to ensure compliance with applicable Federal and State laws and regulations, such as those for Medicare, Medicaid, OSHA, and IRS;

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<sup>22</sup> See 18 NYCRR § 521-1.4 [b][3]; HCCA Code of Conduct; IIA Professional Standards

<sup>23</sup> 18 NYCRR § 521-1.4 [b][1][i]

<sup>24</sup> 18 NYCRR § 521-1.4 [b][1][i]

<sup>25</sup> 18 NYCRR § 521-1.4 [b][1][ii]

<sup>26</sup> 18 NYCRR § 521-1.4 [b][1][iii]



- Establishing and maintaining effective means of communication including a confidential hotline to help ensure complaints, concerns, or questions relative to compliance issues are disclosed and resolved;
- Overseeing development of written materials and training programs designed to promote an understanding of compliance issues, laws and regulations, and consequences of non-compliance;
- Developing auditing and monitoring tools within the organization for corporate compliance correction of identified problems;
- Ensuring that any third party auditing firm executes their duties appropriately and directs it to determine the adequacy and effectiveness of the network of internal controls. Reviews and directs the Firm's work on auditing, operating, and reporting systems and its recommended changes based on findings to improve efficiency, accountability, and compliance with relevant regulations;
- Preparing and presenting reports to senior management and the Audit and Compliance Committee periodically, as requested, and as deemed appropriate. Reports to the Audit and Compliance Committee shall occur on at least a quarterly basis;
- Independently acting on matters related to the Program including, without limitation:
  - Designing, coordinating, and conducting internal investigations related to compliance matters such as, for example, reports involving the actual, potential, or imminent commission of a Prohibited Activity (as that term is defined below in § XIV);<sup>27</sup> and
  - With regard to the conduct of internal investigations, “documenting, reporting, coordinating, and pursuing any resulting corrective action with all internal departments, contractors” and State and Federal regulatory oversight bodies.
- Drives continuous improvement in organizational processes and services, using quality improvement processes and assessment tools to better identify and serve customer needs. Actively improves the effectiveness and productivity of the Compliance function;

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<sup>27</sup> See U.S. Department of Health and Human Services, Office of Inspector General (“OIG”), OIG 1998 Compliance Guidance to Hospitals, 63 Fed. Reg. 8887, 8994, § [ii][B][1], and 8997, § [II][G][1].



- Maintaining compliance with mandatory/regulatory requirements and assures team members do the same. Aligning and collaborating closely with the Legal and Risk departments. Participate as a vital and contributing member of the senior management team;
- Establishing a clear and regular communication rhythm with staff and with stakeholders across Nuvance Health. Translates vision into strategies with clear objectives and practical action plans providing clear guidelines for meeting goals;
- Fulfills all compliance responsibilities related to the position;
- Overseeing the Nuvance Health compliance initiatives related to employee and patient privacy, including, for example, its HIPAA Privacy and Security Program;
- With regard to the Health Quest CIA, assuming responsibility for all obligations charged to the Chief Compliance Officer (“CCO”) under the Health Quest CIA, including, without limitation, the following:
  - Developing and implementing policies, procedures, and practices designed to ensure compliance with the Health Quest CIA and Federal healthcare program requirements;
  - Making periodic reports, but in no event less than on a quarterly basis, regarding compliance matters directly to the Audit and Compliance Committee;
  - Exercising his/her authority, as necessary, to report compliance matters directly to the Audit and Compliance Committee, as well as the Nuvance Health Board, at any time;
  - Providing written documentation of his/her reports made to the Audit and Compliance Committee to OIG upon request;
  - Monitoring the day-to-day-compliance activities engaged in by Health Quest as well as any reporting obligations created under the Health Quest CIA;
  - Limiting the performance of any noncompliance job responsibilities; and
  - Ensuring that noncompliance job responsibilities, if any, do not interfere with the CCO’s ability to perform the duties outlined in



the Health Quest CIA; Avoiding the assumption of any responsibilities that involve acting in the capacity as legal counsel or supervising legal counsel functions for Health Quest;

- Serving as Chair of the ECC and convening ECC meetings at least on a quarterly basis; and
  - Monitoring internal and external audits and investigations and providing reports to the ECC and the Audit and Compliance Committee related to such monitoring;
- Ensuring compliance with applicable Federal and State compliance program requirements including, without limitation, the following: (i) N.Y. Social Services Law § 363-d and 18 NYCRR part 521; (ii) 42 CFR § 483.85; and (iii) 42 CFR §§ 425.300 *et seq.*; and
  - Completing or facilitating the completion of any compliance program-related certification, attestation or other obligation as may be required under applicable law or by New York State Office of the Medicaid Inspector General or other duly authorized regulatory oversight agency; and
  - Performing other duties, as assigned and as necessary to implement and maintain an effective Program.

#### Access to Records, Facilities, and Personnel

21) Unless otherwise prohibited by applicable law, the CCAPO shall have unrestricted and unimpeded access to all Nuvance Health books, records, files, information, data and documents and facility areas necessary for the CCAPO's fulfillment of his/her compliance program responsibilities. The CCAPO shall also have access to Covered Individuals who may have information that is potentially relevant to a compliance matter under review.

#### Resources

22) The CCAPO shall have sufficient resources to effectuate the Program. The Audit and Compliance Committee shall approve the Corporate Compliance Office's budget, including its staffing plan, on an annual basis.

### **VII. ESTABLISHMENT OF AN EXECUTIVE COMPLIANCE COMMITTEE ("ECC")**

23) Nuvance Health has established and shall continue to maintain an ECC composed of members with requisite seniority and comprehensive experience within their respective Nuvance Health departments and work areas. The purpose of the ECC is to provide advice, guidance, counsel, support, and assistance to the CCAPO related to the development, implementation, operation, and monitoring of the Program.



24) At the minimum, the ECC shall consist of the following individuals by title:

- Chief Compliance Officer (Chair);<sup>28</sup>
- President & Chief Executive Officer;
- Chief Operating Officer;
- Chief Medical Officer;
- Chief Legal Officer & General Counsel;
- The President of each Nuvance Health Hospital;
- Chief Financial Officer;
- Chief Human Resources Officer;
- Chief Information Officer;
- Chief Information Security Officer;
- Chief Physician Executive;
- Chief Operating Officer – Medical Practices
- A Vice President of Medical Affairs; and
- Deputy Chief Compliance Officer.

25) The CCAPO shall serve as the Chair of the ECC.

26) The ECC shall operate as set forth in the ECC Charter, which was approved and adopted by the Audit and Compliance Committee on April 27, 2023.<sup>29</sup> (**Note:** the ECC Charter annexed hereto for reference purposes as **Exhibit “2”**).

27) The ECC, by official action, may establish Subcommittees, *ad hoc* committees, and taskforces as it deems necessary to carry out the purposes of the ECC.

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<sup>28</sup> This role is fulfilled by the CCAPO.

<sup>29</sup> Note, the Nuvance Health ECC Charter was originally approved and adopted by the Audit and Compliance Committee of the Nuvance Health Board of Directors (the “Audit Committee”) at a n Audit Committee meeting held on April 25, 2019, and the Audit Committee thereafter approved and adopted revisions of the same at Audit Committee meetings held on December 12, 2019, July 23, 2020, June 24, 2021, and April 27, 2023.



## VIII. ESTABLISHMENT OF FACILITY AND OTHER COMPLIANCE COMMITTEES

28) The CCAPO shall have the authority to establish, as needed at the discretion of the CCAPO or at the request of the ECC, or as required by internal policy, Facility or Regional compliance-related committees (as well as compliance committees focused on a designated risk area such as the Revenue Cycle Compliance Workgroup), including, but not limited to, committees, workgroups or taskforces at any of the following Nuvance Health units, facilities, and entities:

- Any Nuvance Health hospitals and nursing homes;
- Nuvance Health Medical Practice Groups;
- Nuvance Health home care entities; and
- Taconic and WCHN ACOs.

Such facility or regional compliance committees shall be chaired by the lead compliance officer assigned to each of the enumerated facilities, units, or entities.

## IX. COMPLIANCE PROGRAM REQUIREMENTS

### Key Components

Nuvance Health shall at all times operate and maintain an effective Compliance Program.

29) Generally, in order for Nuvance Health to establish and maintain an effective Program, said Program must be reasonably designed to:

- Promote the highest level of corporate responsibility;
- Demonstrate Nuvance Health's commitment to ethical conduct and compliance with all: (i) applicable Federal and State laws; (ii) Federal health program and private payor requirements; and (iii) requirements and obligations set forth under the Health Quest CIA;
- Encourage the good faith participation in the Program through the mandatory reporting of known or suspected compliance violations;
- Protect whistleblowers from retaliation; and
- Facilitate the imposition of sanctions and/or other disciplinary measures against Covered Individuals that engage in prohibited activities or otherwise fail to affirmatively participate in the Program.





### Understanding the Seven (7) Key Elements of an Effective Compliance and Ethics Program

30) Nuvance Health is committed to compliance with applicable legal requirements and sound ethical standards and satisfying the requirements described for an effective compliance program under the 2021 United States Sentencing Commission Guidelines Manual (“USSCGM”) § 8B2.1 - *Effective Compliance and Ethics Program*.<sup>30</sup>

31) Additionally, in establishing an effective compliance program, Nuvance Health refers to Federal and State advisory materials for guidance, including but not limited to:

1998 and 2005 OIG <i>Compliance Program Guidance for Hospitals and Supplemental Compliance Program Guidance for Hospitals</i> , respectively; <sup>31</sup>	2000 OIG <i>Compliance Program Guidance for Individual and Small Group Physician Practices</i> ; <sup>32</sup>	2000 and 2008 OIG <i>Compliance Program Guidance for Nursing Facilities and Supplemental Compliance Program Guidance for Nursing Facilities</i> , respectively; <sup>33</sup>
1998 OIG <i>Compliance Program Guidance for Home Health Agencies</i> ; <sup>34</sup>	OIG <i>Draft Compliance Program Guidance for Recipients of PHS Research Awards</i> ; <sup>35</sup>	New York State Office of the Medicaid Inspector General <i>New York State Social Services Law 363-d and Title 18 New York Codes of Rules and Regulations Part 521 Compliance Program Review Guidance (2016)</i> ; <sup>36</sup>
OMIG <i>Compliance Program Guidance (Jan 2023)</i> and accompanying OMIG	OMIG <i>Compliance Program Review Module</i> <sup>38</sup>	OMIG <i>Self-Disclosure of Medicaid Overpayments guidance documents</i> <sup>39</sup>

<sup>30</sup> See 2021 United States Sentencing Commission Guidelines Manual (“USSCGM”) § 8B2.1.

<sup>31</sup> See 63 Fed. Reg. 8987 (1998); see also 70 Fed. Reg. 4858 (2005).

<sup>32</sup> See 65 Fed. Reg. 59434 (2000).

<sup>33</sup> See 65 Fed. Reg. 14289 (2000); see also 73 Fed. Reg. 56832 (2008).

<sup>34</sup> See 63 Fed. Reg. 42410 (1998).

<sup>35</sup> See 70 Fed. Reg. 71312 (2005).

<sup>36</sup> See New York State Office of the Medicaid Inspector General, *New York State Social Services Law 363-d and Title 18 New York Codes of Rules and Regulations Part 521 Compliance Program Review Guidance (2016)*.

<sup>38</sup> See OMIG Compliance Program Review Module (available at: <https://omig.ny.gov/compliance/compliance-library>) (last accessed on: 4/10/23)

<sup>39</sup> OMIG Self-Disclosure of Medicaid Overpayments guidance documents - *Self-Disclosure Program Requirements Guidance, Frequently Asked Questions & Self-Disclosure Submission Information and Instructions* (available at: <https://omig.ny.gov/provider-resources/self-disclosure>) (last accessed on 4/10/23).



<i>Summary of Assessment of Public Comment;</i> <sup>37</sup>		
U.S. Department of Justice, Criminal Division Fraud Section, <i>Evaluation of Corporate Compliance Programs</i> (updated March 2023). <sup>40</sup>	Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, <i>A Resource Guide to the U.S. Foreign Corrupt Practice Act</i> , [Second Edition] (July 2020) <sup>41</sup>	9/15/22 Department of Justice Deputy Attorney General Lisa Monaco Memorandum regarding <i>Further Revisions to Corporate Criminal Enforcement Policies Following Discussions with Corporate Crime Advisory Group</i> <sup>42</sup>
OIG's <i>Compliance Program Guidance for Third-Party Medical Billing Companies</i> <sup>43</sup>		

32) Nuvance Health consists of numerous entities that are enrolled providers in the New York State Medical Assistance Program (“NYS Medicaid”), and it complies with the requirements for provider compliance programs set forth under Social Services Law § 363-d and its implementing fraud, waste, and abuse prevention regulations found at 18 NYCRR Part 521 (collectively hereinafter referred to as “Part 521”).

33) To meet the requirements for an effective compliance program as described in the guidance documents listed in ¶ 31 of this section, *supra*, the USSCGM, and Part 521, Nuvance Health’s Program must, at the minimum, be comprised of the seven (7) key elements outlined in ¶¶ 34-40 below.<sup>44</sup>

<sup>37</sup> See OMIG Compliance Program Guidance (with Addendums A and B) (available at: <https://omig.ny.gov/compliance/compliance-library>) (last accessed on 4/10/23); see also OMIG Summary of Assessment of Public Comment (available at: <https://omig.ny.gov/information-resources/laws-and-regulations#Regulations>) (last accessed on 4/10/23).

<sup>40</sup> U.S. Department of Justice, Criminal Division Fraud Section, *Evaluation of Corporate Compliance Programs* (updated March 2023) (available at: <https://www.justice.gov/criminal-fraud/page/file/937501/download>

<sup>41</sup> See Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, *A Resource Guide to the U.S. Foreign Corrupt Practice Act*, [Second Edition] (July 2020) (available at: <https://www.justice.gov/criminal-fraud/file/1292051/download>) (last accessed on: April 9, 2023).

<sup>42</sup> September 15, 2022 Department of Justice Deputy Attorney General Lisa Monaco Memorandum regarding *Further Revisions to Corporate Criminal Enforcement Policies Following Discussions with Corporate Crime Advisory Group* (available at: <https://www.justice.gov/opa/speech/file/1535301/download>) (last accessed on 10/24/22)

<sup>43</sup> When contracting with third-party billing companies, Nuvance Health considers OIG’s *Compliance Program Guidance for Third-Party Medical Billing Companies*, 63 Fed. Reg. 70138 (1998).



**ELEMENT #1**

34) The development and dissemination of written policies and procedures including, without limitation, standards of conduct (*e.g.*, code of ethics, code of conduct), that promote Nuvance Health’s commitment to carrying out its operations in a legally compliant and ethical manner.<sup>45</sup> Written policies and procedures shall, among other things:

- Apply to all Covered Individuals and must identify Federal and State laws that apply to Nuvance Health’s risks areas set forth in ¶¶ 42 and 43 of X, *infra*.<sup>46</sup>
- Shall require Covered Individuals to refuse to participate in unethical and illegal conduct and to report unethical or illegal conduct that they are aware of to the CCO;<sup>47</sup> and
- Shall outline Nuvance Health whistleblower protection/antiretaliation policies.<sup>48</sup>

**ELEMENT #2**

35) The designation of a Chief Compliance Officer (“CCO”) to operate and monitor the day-to-day activities of the Program. Additionally, the establishment of a compliance committee for the purpose of, among other things, to provide advice counsel, assistance, and other support to the CCO; and (ii) Coordinating Program implementation activities.<sup>49</sup>

**ELEMENT #3**

36) The development of training and education for all affected Covered Individuals. This includes, for example, the following:

- Completion of annual training by Covered Individuals;<sup>50</sup>
- Training and education on the risk areas set forth in ¶¶ 42 and 43 of § X, *infra*.<sup>51</sup> and
- The development and maintenance of a training plan.<sup>52</sup>

<sup>45</sup> See 18 NYCRR § 521-1.4 [a][1].

<sup>46</sup> See 18 NYCRR § 521-1.4 [a][2][i].

<sup>47</sup> See 18 NYCRR § 521-1.4 [a][2][iv][b].

<sup>48</sup> See 18 NYCRR § 521-1.4 [a][2][vii].

<sup>49</sup> See 18 NYCRR § 521-1.4 [c].

<sup>50</sup> See 18 NYCRR § 521-1.4 [d][2].

<sup>51</sup> See 18 NYCRR § 521-1.4 [d][1][i].

<sup>52</sup> See 18 NYCRR § 521-1.4 [d][4].



**ELEMENT # 4**

37) The establishment and implementation of open, accessible, published, and effective lines of communication between the CCO and all Covered Individuals. Additionally, the maintenance of a process, such as a publicized confidential compliance helpline, to receive concerns, reports, requests for guidance, complaints, and other compliance-related issues in an anonymous and confidential manner directly to the CCO.<sup>53</sup>

**ELEMENT # 5**

38) The establishment and fair and consistent enforcement of written disciplinary standards, policies, and procedures for Covered Individuals who have failed to comply with Applicable Law and Nuvance Health's internal standards of conduct (or who have otherwise engaged in prohibited activities) and encourage good faith participation in the compliance program by Covered Individuals.<sup>54</sup>

**ELEMENT # 6**

- 39) The performance of auditing and monitoring to facilitate the ongoing and routine monitoring of the Program and to identify compliance-related risks. This includes, but is not limited to:
- The performance of internal and external audits focused on compliance program risk areas outlined in OMIG Fraud, Waste, and Abuse Prevention program regulations including, without limitation, risk identified by organizational experience;<sup>55</sup>
  - The performance of exclusion/ineligible persons checks every 30 days;<sup>56</sup>
  - The performance of an annual Program review to determine:<sup>57</sup>
    - Compliance with Federal and State law, Federal healthcare program requirements, and 18 NYCRR Part 521;
    - Program effectiveness; and
    - Whether any part of the Program requires revision or corrective action.

<sup>53</sup> See 18 NYCRR § 521-1.4 [e][1-3].

<sup>54</sup> See 18 NYCRR § 521-1.4 [f].

<sup>55</sup> See 18 NYCRR § 521-1.4 [g][1][i]

<sup>56</sup> See 18 NYCRR § 521-1.4 [g][3]

<sup>57</sup> See 18 NYCRR § 521-1.4 [g][2]



**ELEMENT # 7**

40) Responding to Compliance Issues, which includes the establishment of processes, policies, and procedures concerning the prompt responding to compliance issues once raised and received, or learned through internal auditing and monitoring.<sup>58</sup> This includes the investigation of potential offenses, the development of corrective action plans in response to confirmed violations of the Program and/or applicable law, as well as the mandatory reporting and timely refunding of any overpayments.

Health Quest CIA<sup>59</sup>

41) In addition to meeting Federal healthcare program requirements and implementing an effective compliance program as outlined above, Nuvance Health, on behalf of Health Quest, is committed to complying with all requirements set forth under the Health Quest CIA, which are generally described in the following seventeen (17) categories of Health Quest CIA obligations:

- Appointment of Chief Compliance Officer;
- Review and oversight by the Board;
- Development and implementation of policies and procedures;
- Engagement of an Independent Review Organization;
- Establishment of a disclosure program;
- Notification to OIG of other government agency investigations;
- Notification to OIG of any reportable events;
- Appointment of a Compliance Committee;
- Implementation of annual employee certification process;
- Implementation of training and education;
- Development of a risk assessment and internal review process;
- Implementation of Ineligible Persons screening requirements;
- Implementation of an overpayment policy;
- Notification to OIG regarding certain sales or purchases;

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<sup>58</sup> See 18 NYCRR § 521-1.4 [h]

<sup>59</sup> The Nuvance Health Board of Directors and its Audit and Compliance Committee are acting on behalf of HQSI to meet the Board requirements of the CIA.



- Annual certification by Chief Compliance Officer, Chief Executive Officer, and Chief Financial Officer;
- Submission of implementation report to OIG; and
- Submission of the annual report to OIG.

**X. COMPLIANCE PROGRAM RISK AREAS**

42) The Program shall address the following compliance risk areas:

**Compliance Risk Areas**

✓ <i>Medical Record Documentation</i>	✓ <i>Risks related to medical practice groups</i>	✓ <i>Billing and coding</i>
✓ <i>Payments</i>	✓ <i>Risks related to home care services and related activities</i>	✓ <i>Medical necessity and quality of care</i>
✓ <i>Governance</i>	✓ <i>Mandatory reporting</i>	✓ <i>Credentialing</i>
✓ <i>Risks related to human resources and labor employment</i>	✓ <i>Privacy and security of patient, employee, and other confidential information (e.g., HIPAA and relevant State privacy laws)</i>	✓ <i>Antitrust (e.g., joint ventures, affiliations, clinical integration, financial integration, market share analysis)</i>
✓ <i>Refunding overpayments</i>	✓ <i>Information governance and record management</i>	✓ <i>Emergency Medical Treatment and Labor Act (EMTALA)</i>
✓ <i>Anti-markup (i.e., payment limitations to technical components of diagnostic tests purchased from outside suppliers)</i>	✓ <i>Fraud, waste, and abuse</i>	✓ <i>Other risk areas that are or should with due diligence be identified by the CCAPO or the ECC.</i>



✓ <i>Academic affairs</i>	✓ <i>Human research</i>	<i>subject</i>	<i>Ordered services</i>
✓ <i>Contractor management</i>			

43) In addition to the above, risks involving activities prohibited under the Stark Law and Anti-kickback statute, as well as other improper inducements (e.g., financial arrangements -- including administrative and strategic arrangements -- between hospitals and physicians in group practice and hospital-based physicians; medical directorships; hospital incentives to physicians; physician compensation; professional services arrangements; gain and profit sharing arrangements; space rentals; equipment rentals; personal services and management contracts; sale or purchase of physician practices; ambulatory surgical center arrangements; managed care and risk sharing arrangements; and other financial arrangements with outside entities to whom NHMP or NHMP-CT may refer Federal health care program business), shall also be evaluated and addressed.<sup>60</sup>

**XI. NUVANCE HEALTH FRAUD PREVENTION PROGRAM**

Overview

44) A crucial component of the Compliance Program is the dedication of resources to implement initiatives to prevent, deter, and combat fraud and criminal conduct. All Covered Individuals, within their role, duties, and functions, are responsible for engaging in practices that deter and defend Nuvance Health from fraudulent activities and other forms of improper and illegal conduct.<sup>61</sup> One key practice that Covered Individuals may exercise to reduce fraud-related risks is voicing their concerns with their supervisor or manager if they see a Nuvance Health activity that appears to be questionable or improper. Another practices that Covered Individuals may deploy to reduce fraud is imitating the prompt reporting of any suspected fraudulent behavior or other improper conduct that comes to their attention to the Compliance Office as outlined in § XV below. In short, all Covered Individuals may become champions of fraud prevention by performing these three (3) simple tasks: ***Ask Questions. Voice Your Concerns. Report Improper Conduct.***

What is Fraud?

45) For purposes of this Policy, fraud can be considered in the following two (2) aspects:

- Fraud related to Federal healthcare programs (e.g., Medicare, Medicaid, and Tricare) and private payor reimbursement for the provision healthcare

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<sup>60</sup> According to the OIG, “[i]n particular, arrangements with hospitals, hospices, nursing facilities, home health agencies, durable medical equipment suppliers, pharmaceutical manufacturers and vendors are areas of potential concern.” 65 Fed. Reg. at 59440.

<sup>61</sup> See COSO, Sample Fraud Risk Management Policy, Appendix F-4, p. 91



services and items. When discussing fraud in this aspect, the concepts of waste, and abuse should also be considered; and

- Organizational fraud.

#### Understanding Fraud, Waste, and Abuse in Federal healthcare programs

46) As it relates to Federal health care programs, fraud may generally be defined as “knowingly and willfully executing, or attempting to execute, a scheme or artifice to defraud any health care benefit program” or to engage in false or fraudulent activities to receive payment from said healthcare benefit program.<sup>62</sup> In short, fraud is an intentional act involving the submission of false information to receive payment or a benefit from a federal healthcare program.<sup>63</sup> In the context of Federal healthcare programs, fraud schemes and acts generally fall into one or more of the following three categories:<sup>64</sup>

- “Knowingly submitting, or causing to be submitted, false claims or making misrepresentations of fact to obtain a Federal health care payment for which no entitlement would otherwise exist;”
- “Knowingly soliciting, receiving, offering, or paying remuneration (e.g., kickbacks, bribes, or rebates) to induce or reward referrals for items or services reimbursed by Federal health care programs;” or
- “Making prohibited referrals for certain designated health services.”

47) Some examples of fraud against Federal healthcare programs includes, but is not limited to:<sup>65</sup>

<sup>62</sup> Medicare Learning Network, Combatting Medicare Parts C and D Fraud, Waste, and Abuse, p.13 <https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/Downloads/CombMedCandDFWAdownload.pdf> (last accessed on 5/8/23); *see also* 18 USC 1347 [a].

<sup>63</sup> *See* Medicare Learning Network, Combatting Medicare Parts C and D Fraud, Waste, and Abuse, (2019), p.13 <https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/Downloads/CombMedCandDFWAdownload.pdf> (last accessed on 5/8/23)

<sup>64</sup> *See* Medicare Learning Network Medica Fraud, Waste & Abuse: Prevent, Detect and Report, pg. 6 (ICN MLN4649244 Jan. 2021) (available at: <https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/Downloads/Fraud-Abuse-MLN4649244.pdf> (last accessed on 5/8/23).

<sup>65</sup> *See, e.g.*, for bullets ## 4-7 of ¶ 47, the New York Office of the Medicaid Inspector General, About Medicaid Fraud, Waste, and Abuse (available at: <https://omig.ny.gov/medicaid-fraud/about-medicoid-fraud-waste-and-abuse> (last accessed on 5/8/23); for bullets ## 1-3 & 8 of ¶ 47, the Medicare Learning Network Medica Fraud, Waste & Abuse: Prevent, Detect, Report, pg. 6 (ICN MLN4649244 Jan. 2021) (available at: <https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/Downloads/Fraud-Abuse-MLN4649244.pdf>) (last accessed on 5/8/23); for bullets ## 9-11 of ¶ 47, the Connecticut Office of the Attorney General William Tong, Stop Healthcare Fraud and Abuse (available at: <https://portal.ct.gov/AG/Health-Care-Fraud/Stop-Healthcare-Fraud-and-Abuse>) (last accessed on 5/8/23).





- Knowingly billing for services and supplies that were not provided;
- Knowingly ordering and billing for unnecessary services;
- Paying for Federal healthcare program referrals
- Selling prescriptions;
- Intentionally billing for a more expensive treatment than was provided;
- Giving money or gifts to patients in exchange for the delivery of medical services;
- Accepting kickbacks for patient referrals;
- Billing for appointments patients fail to keep;
- Knowingly billing for non-covered services;
- Knowingly engaging in *duplicate billing* - billing separately for services that should be bundled together at a lower rate; and
- Inappropriately or illegally altering a claim or a document to support a claim.

How does Waste and Abuse Differ from Fraud?

48) With regard to Federal health care programs, the terms fraud, waste, and abuse have different meanings, as outlined in the table below:

<u>Category</u>	<u>Description</u>	<u>Examples</u>
<b>Fraud</b>	Fraud is characterized as intentional deceptions for the purpose of increasing Federal healthcare program reimbursement.	<i>Knowingly billing for services that were not provided</i> <i>Billing for nonexistent prescriptions</i> <sup>66</sup>

<sup>66</sup> Medicare Learning Network, Combatting Medicare Parts C and D Fraud, Waste, and Abuse, Web-Based Training Course (1/19), p.13 <https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/Downloads/CombMedCandDFWAdownload.pdf> (last accessed on 5/8/23);



		<i>Intentionally falsifying medical records and claims forms to receive higher reimbursement<sup>67</sup></i>
<b>Waste</b>	Waste is usually the result of unacceptable inefficiencies. “Waste includes practices that directly or indirectly, result in unnecessary costs to [a Federally healthcare program].” <sup>68</sup> Generally, waste is not considered criminally negligent, but rather actions that constitute a misuse of resources. <sup>69</sup>	<i>Ordering excessive diagnostic tests<sup>70</sup> Prescribing medications beyond that required for the treatment of the health condition at hand<sup>71</sup></i>
<b>Abuse</b>	Abuse is sometimes referred to as “Bending the Rules” <sup>72</sup> Abuse may be described as “practices that are inconsistent with sound fiscal, business, medical or professional practices and which result in unnecessary costs to [a Federal healthcare program] . . . .” <sup>73</sup> Based on the facts surrounding a given improper billing activity, abuse can lead to civil and criminal provider liability.	<i>Improper billing practices such as upcoding and unbundling codes;<sup>74</sup> Unknowingly Billing for unnecessary services<sup>75</sup> Unknowingly charging excessively for services or supplies<sup>76</sup> Payment for services that do not meet recognized healthcare standards<sup>77</sup></i>

### Understanding Organizational Fraud

49) Nuvance Health also appreciates that many fraud-related risks exist in the context of Organizational Fraud. For purposes of this Charter, Organizational Fraud may be best defined

<sup>67</sup> *Id.* at p.15.

<sup>68</sup> Medicare Learning Network, Combatting Medicare Parts C and D Fraud, Waste, and Abuse, p.15 <https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/Downloads/CombMedCandDFWAdownload.pdf> (last accessed on 5/8/23);

<sup>69</sup> *See Id.*

<sup>70</sup> The Medicare Learning Network Medica Fraud, Waste & Abuse: Prevent, Detect, Report, pg. 6 (ICN MLN4649244 Jan. 2021) (available at: <https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/Downloads/Fraud-Abuse-MLN4649244.pdf>) (last accessed on 5/8/23)

<sup>71</sup> Medicare Learning Network, Combatting Medicare Parts C and D Fraud, Waste, and Abuse, p.15 <https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/Downloads/CombMedCandDFWAdownload.pdf> (last accessed on 5/8/23);

<sup>72</sup> *See* Medicare Learning Network Medica Fraud, Waste & Abuse: Prevent, Detect, and Report, pg. 7 (ICN MLN4649244 Jan. 2021) (available at: <https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/Downloads/Fraud-Abuse-MLN4649244.pdf>) (last accessed on 5/8/23).

<sup>73</sup> 18 NYCRR § 515.1 [b][1]

<sup>74</sup> *See id.*

<sup>75</sup> Medicare Learning Network, Combatting Medicare Parts C and D Fraud, Waste, and Abuse, p.15 <https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/Downloads/CombMedCandDFWAdownload.pdf> (last accessed on 5/8/23);

<sup>76</sup> *See id.*

<sup>77</sup> 18 NYCRR § 515.1 [b][1]



as any intentional act or omission intended to deceive others that results in the perpetrating individual achieving a gain at the expense of Nuvance Health (or a Nuvance Health stakeholder) suffering a loss.<sup>78</sup> Examples of fraud in this context may include, but is not limited to:

- *Fraudulent financial reporting* - intentional misstatements or omissions of amounts or disclosures in financial statements to deceive financial statement users. This could include intentional alteration of accounting records, misrepresentation of transactions, or intentional misapplication of accounting principles.<sup>79</sup> Other examples of fraudulent financial reporting include:
  - Setting aside reserves that are unsupported
  - Improperly recognizing revenue by representing a false inventory
- *Fraudulent non-financial reporting* such as:<sup>80</sup>
  - the use of inaccurate records related to environmental health and safety;
  - reporting inaccurate productivity measures; and
  - falsification of business metrics.
- *Misappropriation of assets* – theft of an entity’s assets.<sup>81</sup> This could include theft of property, embezzlement of receipts, or fraudulent payments. Note, the misappropriation of assets can be tangible (e.g., cash, equipment, supplies) or intangible (e.g., proprietary information and business strategies and related information);<sup>82</sup> and
- Corruption – bribery, kickbacks, illegal gratuities, and other illegal acts<sup>83</sup>.

### Fraud Prevention Strategies

50) Fraud prevention is considered and implemented as part of each of the seven (7) elements of the Compliance Program provided above in ¶¶ 34-40 of § IX. Key highlights include the incorporation of fraud risk considerations in enterprise-wide risk identification, assessment, and prioritization activities, as well as training and education focused on fraud-related topics.

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<sup>78</sup> See Committee of Sponsoring Organizations of the Treadway Commission (“COSO”), *Fraud Risk Management Guide*, pg. 1 (Sept. 2016).

<sup>79</sup> See COSO, p. 23.

<sup>80</sup> See COSO, p. 24.

<sup>81</sup> See COSO p.25.

<sup>82</sup> See COSO, p. 25.

<sup>83</sup> *Id.*



Fraud risks are also considered as part of internal audit engagements consistent with the requirements outlined in the Institute of Internal Auditors International (“IIA”) International Professional Practices Framework (“IPPF”). Under the IPPF, the Nuvance Health Internal Audit Activity “evaluate[s] the potential for the occurrence of fraud and how [Nuvance Health] manages fraud risk.”<sup>84</sup>

## XII. PRIVACY AND SECURITY PROGRAM

### Commitment to Privacy and Data Security

51) Nuvance Health is committed to protecting the confidentiality, integrity, and availability of protected health information (“PHI”) and other forms of confidential personal information (*i.e.*, employee health records; personal identifying employee information;<sup>85</sup> social security numbers; driver’s license numbers or non-driver identification card numbers; account, credit or debit card numbers that can be used to access an individual’s financial account; biometric information;<sup>86</sup> user names or email addresses in combination with a password or security question and answer that would permit access to an online account). As part of this commitment, Nuvance Health has implemented administrative, physical, and technical safeguards to facilitate the ongoing identification of, and timely response to, reasonably anticipated threats to Nuvance Health devices and systems that house, store, or transmit confidential personal information.

52) Nuvance Health strictly prohibits the impermissible access, use or disclosure of confidential personal information. Covered Individuals are reminded that any authorized access, use, or disclosure of confidential personal information shall be:

- Consistent with applicable Federal and State law including, without limitation:<sup>87</sup>

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<sup>84</sup> IIA International Standards for the Professional Practice of Internal Auditing, Standard 2120.A2 (p.14)(2016)(available at: <https://www.theiia.org/globalassets/site/standards/mandatory-guidance/ippf/2017/ippf-standards-2017-english.pdf>) (last accessed on 5/8/23).

<sup>85</sup> For purposes of the Charter, “personal identifying employee information” shall mean an employee’s social security number, home address or personal telephone number, personal electronic mail address, internet identification name or password, parents’ surname prior to marriage, or driver’s license number. (See Labor Law § 203-d).

<sup>86</sup> For purposes of the Charter, “biometric information” shall mean “data generated by electronic measurements of an individual’s unique physical characteristics, such as a fingerprint, voice print, retina or iris image, or other unique physical representation or digital representation of biometric data which are used to authenticate or ascertain the individual’s identity.” (General Business Law § 899-aa [b][5] (eff. 10/23/19) (available at: <https://www.nysenate.gov/legislation/laws/GBS/899-AA>) (last accessed 5/8/23) .

<sup>87</sup> The HIPAA Privacy Rule may be found at 45 CFR §§ 164.500 *et seq.* (45 CFR part 164, Subpart “E”) (available at: <https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-C/part-164/subpart-E> (last accessed on 5/8/23); The HIPAA Security rule may be found at 45 CFR §§ 164.302 *et seq.* (45 CFR Part 164, Subpart “C”) (available at: <https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-C/part-164/subpart-C> (last accessed on 5/8/23); N.Y. Labor Law 203-d is available at: <https://www.nysenate.gov/legislation/laws/LAB/203-D> (last accessed on 5/8/23) N.Y. Labor Law 201-e is available at: <https://www.nysenate.gov/legislation/laws/LAB/201-E> (last accessed on 5/8/23); Conn. Gen Stat. §§ 42-470 *et seq* is available at: [https://www.cga.ct.gov/current/pub/chap\\_743dd.htm](https://www.cga.ct.gov/current/pub/chap_743dd.htm) (last accessed on 5/8/23).



- HIPAA Privacy and Security Rules;
  - N.Y. General Business Law § 399-ddd (Confidentiality of Social Security Account Number Information);
  - N.Y. Labor Law §§ 203-d (Employee Personal Identifying Information) and 201-e (Maintenance of Employee-Patient Records at Occupational Health Service Centers);
  - Conn. Gen Stat. §§ 42-470 *et seq.* (Protection of Social Security Numbers and Personal Information)
- In accordance with internal policies and procedures; and
  - Limited to the minimum necessary to carry out or otherwise fulfill the authorized purpose of such use, access, or disclosure.

53) All external transmissions of confidential personal information shall be securely transmitted in accordance with HIPAA privacy and security and Information Technology information governance policy and procedures.

#### Mandatory Reporting and Breach Notification

54) All Covered Individuals who have access to or otherwise use Nuvance Health confidential personal information shall promptly report any suspected, potential, or actual incident involving the privacy or security of such information. Such reporting shall be made as provided in ¶¶ 61-63 of § XV, *infra*, except that all Covered Individuals who are business associates<sup>88</sup> of Nuvance Health shall report such incidents as set forth in their business associate agreement with Nuvance Health.

55) If an incident occurs that may constitute a breach of confidential personal information (*see* ¶ 56, *infra*, for more details) including, for example, PHI, the Compliance Office will, through the undertaking of a responsive investigation and the application of relevant Nuvance Health internal policies and procedures, determine whether such incident constitutes a breach of confidential personal information under applicable Federal or State law. The Compliance Office will, where necessary and appropriate (*e.g.*, phishing incidents, incidents involving malicious software, and incidents involving business associates, vendors, or other third-parties) consult with the Information Security division within the Information Technology Department when making this determination.

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<sup>88</sup> A “business associate” is defined by the U.S. Department of Health and Human Services Office of Civil Rights as “a person or entity that performs certain functions or activities that involve the use or disclosure of protected health information on behalf of, or provides services to, a covered entity.” (*See* HHS, Health Information Privacy, *Business Associates*, available at: <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/business-associates/index.html> (last accessed on 5/8/23).



56) Where a breach has been determined under State and/or Federal Law (*e.g.*, HIPAA, General Business Law § 899-aa, CGSA § 36a-701b) to have occurred, Nuvance Health is committed to providing, in a timely fashion, all required notices to: (i) persons affected by the breach; (ii) State and Federal regulatory oversight agencies; and, where necessary (iii) the media.<sup>89</sup> Such breach notification will be provided pursuant to Federal and State law and Nuvance Health's internal breach notification and incident response policies and procedures.

### Sanctions for Non-compliance

57) Covered Individuals who violate Nuvance Health's privacy and data security policies shall be subject to disciplinary action as outlined in this Charter below (*see* § XVII, *infra*).

## **XIII. RESPONSIBILITIES OF COVERED INDIVIDUALS**

58) All covered individuals are responsible for affirmatively participating in the Program by:

- Performing their work functions, duties, and role in a legally compliant and ethical manner by complying with all applicable Federal and State laws, Federal health care program requirements, private payor standards, and applicable internal standards of conduct and associated policies, procedures, and directives;
- Promptly reporting (*see* ¶¶ 61-63 of § XV, *infra*) compliance issues, concerns and Program violations including, for example, any of the prohibited activities listed in § XV below;
- Avoiding the participation in the Program in a non-compliant manner;<sup>90</sup>
- Steering clear of conduct that involves the encouraging, directing, facilitating, or permitting either actively or passively non-compliant behavior;<sup>91</sup>
- Avoiding retaliatory conduct;

<sup>89</sup> *See, e.g.*, HIPAA Breach Notification Rule (Notification in the Case of Breach of Unsecured Protected Health Information) at 45 CFR Part 164, Subpart D (45 CFR §§ 164.400 et seq.) (available at: <https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-C/part-164/subpart-D> (last accessed on 5/8/23)); N.Y. Breach Notification Rule (Notification; Person without Valid Authorization has Acquired Private Information) at General Business Law § 899-aa (available at: <https://www.nysenate.gov/legislation/laws/GBS/899-AA>) (last accessed on 5/8/23); Connecticut Breach Notification Rule (Breach of Security re Computerized Data Containing Personal Information. Notice of Breach. Provision of Identity Theft Prevention Services and Identity Theft Mitigation Services. Delay for Criminal Investigation. Means of Notice. Exception from Public Disclosure. Unfair Trade Practices) at Conn. Gen. Stat. § 36a-701b (available at: [https://cga.ct.gov/current/pub/chap\\_669.htm#sec\\_36a-701b](https://cga.ct.gov/current/pub/chap_669.htm#sec_36a-701b) (last accessed on 5/8/23)).

<sup>90</sup> *See* 18 NYCRR § 521.3 [c][5][ii].

<sup>91</sup> *See* 18 NYCRR § 521.3 [c][5][iii].



- Safeguarding patient and workforce member private and confidential information;
- Promptly reporting any actual or potential privacy incident in furtherance of Nuvance Health's efforts to provide, pursuant to applicable law and Nuvance Health's internal policies and procedures, timely breach notification to affected individuals, the media, and regulatory oversight agencies (*see* ¶¶ 54-56 of § XII, *supra*); and
- Completing all Nuvance Health mandated compliance training and education, as well as all other assigned training.

#### XIV. PROHIBITED ACTIVITIES

59) The following are examples of prohibited activities:

##### Fraud, Waste and Abuse, Conflict of Interest and Standards of Conduct

- Improper coding, billing, or accounting
- Improper patient referrals
- Theft or misappropriation of Nuvance Health assets or government funds
- Acceptance or offering of inappropriate gifts or gratuities
- Inappropriate business arrangements
- Actual or potential conflicts of interest
- Fraudulent or corrupt conduct
- Embezzlement, bribery, kickbacks, and abuse or misuse of corporate assets
- Financial statement fraud and other financial wrongdoing
- Actual or suspected violations of Federal or State law or Nuvance Health's internal policies and procedures including, without limitation, Nuvance Health's Standards of Conduct
- Failure to comply with Federal healthcare program conditions of participation or private payor requirements
- Failure to timely refund overpayments
- Failure or refusal to cooperate in an internal investigation involving violations of the Program

##### Privacy and Security of Patient, Employee, and other Confidential Information

- Inappropriate access, use, disclosure, transmission, or disposition of
- Violations of Nuvance Health HIPAA (as well as other patient privacy and



confidential patient, workforce member or business information

security policies), information technology, employee privacy or record management policies and procedures

### Medical Necessity, Quality of Care, and Patient Rights

- Patient harassment, discrimination, abuse, or other patient rights violations
- Preventable adverse patient events
- Human subjects research misconduct or other scientific research-related violations
- Providing substandard, unsafe, or medically unnecessary patient care
- Violations of Nuvance Health Federalwide assurance with the U.S. Department of Health and Human Services Office of Human Research Protections

### Environmental and Workplace Safety and the Protection of Human Resources

- Workforce member harassment including, without limitation, sexual harassment
- Workplace incivility or conduct that amounts to a hostile work environment
- Environmental hazards and other safety concerns
- Threats of violence
- Conduct that endangers the safety of the Nuvance Health workforce
- The improper handling and/or disposal of medical waste, sharps, pharmaceuticals or radioactive or other toxic substances
- Workforce member discrimination
- Engagement in retaliatory conduct;
- Conduct that violates the applicable workplace safety requirements including, without limitation, those requirements found under the Occupational Safety and Health Act of 1970 (and the implementing regulations thereof) and relevant State law

## XV. REPORTING

### Confidentiality

60) The Corporate Compliance Office shall maintain confidential and anonymous methods for the reporting of compliance issues, concerns, complaints, and violations by Covered





Individuals, as well as patients and other Nuvance Health stakeholders. All reports made to the Corporate Compliance Office through one or more of its confidential methods must be kept confidential whether requested or not by the reporter. Such confidentiality shall be maintained unless disclosure of the reporter is required by applicable law, or the matter being investigated is turned over to law enforcement.

### Reporting Requirements

61) All Covered Individuals are required to assist Nuvance Health in its compliance efforts by promptly reporting compliance questions or concerns including, without limitation, any prohibited activity (*see* § XIV above) that the Covered Individual becomes aware of, to the Corporate Compliance Office as described in ¶¶ 62-63 below.

### Reporting Procedure

62) Covered Individuals may confidentially report compliance issues, concerns, and Program violations in person, by U.S. mail or interoffice mail, telephone, fax, email, or web submission as follows:

#### **Address:**

Nuvance Health Corporate Compliance Office

100 Reserve Rd  
Danbury, CT 06810

#### **General E-mail Address:**

[Compliance@nuvancehealth.org](mailto:Compliance@nuvancehealth.org)

#### **General Office Line:**

203-739-7110

#### **General Facsimile Line:**

203-739-8576 or 845-475-9761

63) Covered Individuals may report compliance issues, concerns, and Program violations anonymously and confidentially by:

- Calling the 24-hour Nuvance Health confidential and anonymous Compliance Hotline at:
  - **844.YES.WeComply** (for Covered Individuals at Nuvance West)



➤ **1-844-395-9331** (for Covered Individuals at Nuvance East); or

Through web submission online at: [nuvancehealth.ethicspoint.com](http://nuvancehealth.ethicspoint.com)

## XVI. ANTI-RETALIATION/WHISTLEBLOWER PROTECTION

64) Nuvance Health is steadfast in its protection of whistleblowers and strictly prohibits retribution, harassment, intimidation, or any other form of retaliation against Covered Individuals or other persons or entities (“Protected Persons”) that, in good faith, make a compliance report or complaint, engage in protected activities or have otherwise participated in the Program.<sup>92</sup> As provided in ¶ 73 below, Nuvance Health’s anti-retaliatory policies are outlined in the Nuvance Health *Whistleblower Protection Policy* (“WPP”), which is updated annually. Although ¶¶ 64-72 that follow provide a general summary of the WPP, Covered Individuals are required to review the WPP in its entirety in order to become fully familiar with: (i) what types of conduct are considered retaliatory in nature and, as such, are strictly prohibited at Nuvance Health; and (ii) what activities are protected under Nuvance Health’s whistleblower protection initiatives.

65) For purposes of this Charter, retaliation includes any of the following actions taken by Covered Individuals against a Protected Person who has participated in good faith in the Program: (i) the discharge, discipline, suspension, demotion, change in responsibilities or any other adverse employment action, negative consequence or detrimental change in the terms or conditions of employment, whether formal or informal,<sup>93</sup> (ii) adverse contractual action; (iii) intimidation, retributory action, harassment, and threats of violence; (iv) penalization;<sup>94</sup> and (v) discrimination.<sup>95</sup>

66) Subject to applicable Federal and State laws governing the disclosure of patient, personal, and other confidential information, examples of protected activities include, but are not limited to, the following when carried out in good faith:

- Reporting or threatening to report potential compliance issues including, without limitation, the violation of applicable Federal or State law including, for example, the commission of healthcare fraud and the submission of false or fraudulent claims;<sup>96</sup>
- Reporting or threatening to report conduct that poses a substantial and specific danger to the public health or public safety;<sup>97</sup>

<sup>92</sup> See, generally, N-PCL § 715-b [a].

<sup>93</sup> See Labor Law § 740 [1][e]; see also CGSA § 31-51m; CGSA § 19a-498; 31 USC § 3730 (h); N-PCL § 715-b [a]; Office of the New York State Attorney General Charities Bureau, *Whistleblower Policies Under the Nonprofit Revitalization Act of 2013*, Guidance Document 2015-5, V. 1.0, p.5 (hereinafter “NYSAG-CB Whistleblower Protection Policy Guidance.”)

<sup>94</sup> See Labor Law § 741 [1][f].

<sup>95</sup> See *id.*

<sup>96</sup> See 18 NYCRR § 521.3 [c][8]; Labor Law § 740 [2][a].

<sup>97</sup> See Labor Law § 740 [2][a].



- Reporting or threatening to report conduct that constitutes improper quality of patient care;<sup>98</sup>
- Reporting or threatening to report conduct that constitutes improper quality of workplace safety;<sup>99</sup>
- Reporting or threatening to report the commission of any prohibited activity listed in § XIV above;<sup>100</sup>
- Reporting or threatening to report corruption, unethical practices, mismanagement, gross waste of funds, abuse of authority or danger to the public safety;<sup>101</sup>
- Investigating potential compliance issues;<sup>102</sup>
- Objecting to participate in a policy, activity or practice that violates applicable law or constitutes improper quality of patient care or improper quality of workplace safety;<sup>103</sup>
- Performing self-evaluations, audits, and remedial actions;<sup>104</sup>
- Exercise of rights afforded under the U.S. and State constitutions;<sup>105</sup>
- Reporting to appropriate officials as set forth in Labor Law §§ 215, 740, and 741 or CGSA §§ 31-51m and 19a-498a, as well as, where authorized by applicable Federal and State law, providing testimony before government or regulatory agencies where such officials sit;<sup>106</sup>
- Filing a complaint or instituting or causing to be instituted any proceeding under the Occupational Safety and Health Act.<sup>107</sup>
- Carrying out the responsibilities under this Charter provided in § XIII above.

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<sup>98</sup> See Labor Law § 741 [2][a].

<sup>99</sup> See *id.*

<sup>100</sup> See N-PCL § 715-b [a]; *see also, generally*, 18 NYCRR § 521-1.4 [a][2][vii][f-g].

<sup>101</sup> CGSA § 4-37j.

<sup>102</sup> 18 NYCRR 521-1.4 [a][2][vii][b].

<sup>103</sup> See Labor Law § 740 [2][c]; Labor Law § 741 [2][b].

<sup>104</sup> 18 NYCRR § 521-1.4 [a][2][vii][c-e].

<sup>105</sup> See CGSA § 31-51q.

<sup>106</sup> See 18 NYCRR § 521-1.4 [a][2][ix]; *see also* 42 U.S.C. 1396a(a)(68); Labor Law Article 20-C; Labor Law § 215; CGSA §§ 31-51m and 19a-498a.

<sup>107</sup> 29 U.S.C. § 660 [c][1].



67) This Charter and all associated Nuvance Health whistleblower-related policies shall be posted on the Nuvance Health website.<sup>108</sup>

68) The subject of any whistleblower complaint may “not be present at or participate in [Nuvance Health Board or Nuvance Health Board Committee] deliberations or vote on the matter relating to such complaint” except for the purposes of providing “information as background or answer questions at a committee or board meeting prior to the commencement of deliberations or voting relating thereto . . . .”<sup>109</sup>

69) The CCAPO, in consultation with the Chief Human Resources Officer, shall administer Nuvance Health’s whistleblower protection policies.

70) Nuvance Health Board Directors who are Nuvance Health employees “may not participate in any board or committee deliberations or voting relating to the administration of the whistleblower policy.”<sup>110</sup>

71) Reports of retaliation may be made anonymously and confidentially as described in ¶¶ 61-62 of § XV above.

72) The Audit and Compliance Committee shall oversee the implementation of Nuvance Health’s whistleblower protection policy. The CCAPO shall report to the Audit and Compliance Committee or the Nuvance Health Board on: (i) said policy and its implementation; and (ii) the general type and resolution of whistleblower complaints.<sup>111</sup> The CCAPO “should have sufficient knowledge, resources, and training to carry [out the whistleblower protection policy], maintain records of whistleblower interactions, and identify and address needs for improvement in the policy.”<sup>112</sup>

73) Nuvance Health has promulgated a *Whistleblower Protection Policy* (Nuvance Health Policy #: COMP 1-4-19), which implements this section of the Charter and further outlines and details Nuvance Health’s anti-retaliation efforts and organizational requirements.

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<sup>108</sup> See N-PCL § 715-b [b][4]. Note, information regarding the Charter, DRA, WPP and other compliance-related policies and guidance may be found internally on the Nuvance Health *The Hub* at [Nuvance Health East](#) and [Nuvance Health West](#), and externally on Nuvance Health’s public facing webpage at [Compliance | Nuvance Health](#).

<sup>109</sup> *Id.* at § 715-b [b][3].

<sup>110</sup> *Id.* at § 715-b [b][2].

<sup>111</sup> See NYSAG-CB *Whistleblower Protection Policy Guidance*, p.4; see also, generally, N-PCL § 715-b [b][2].

<sup>112</sup> NYSAG-CB *Whistleblower Protection Policy Guidance*, p.4; see also, generally, N-PCL § 715-b [b][2].



## XVII. DISCIPLINARY ACTION

74) Established disciplinary standards are necessary to: (i) foster an organizational culture that is grounded on ethical behavior; and (ii) encourage the good faith participation by Covered Individuals in the Program.<sup>113</sup> Written disciplinary standards shall be:<sup>114</sup>

- Published, readily available, and provided to all Covered Individuals; and
- Included in the compliance training and education related to the Program that is provided to Covered Individuals.

75) Covered Individuals who engage in retaliatory conduct, unethical or illegal conduct or other prohibited activities, fail to fulfill their responsibilities under this Charter outlined in § XIII above, or otherwise violate the Program, shall be subject to, consistent with applicable Federal and State law, collective bargaining agreements, third-party contracts, employment agreements, and peer review procedures, progressive and escalating disciplinary action up to, and including, termination of employment, contract or other affiliation with Nuvance Health.<sup>115</sup>

76) Subject to the applicable legal, contractual, and procedural considerations outlined above in ¶75 of this section, disciplinary standards:

- Shall be enforced on a fair, equitable, and consistent basis across Nuvance Health, applying the same disciplinary action to all levels of Covered Individuals for the commission of similar compliance violations;<sup>116</sup>
- May include sanctions and other forms of corrective action that may range from oral or written warnings, privilege revocation, suspension, termination of employment, contract or other affiliation with the organization, financial penalties, or loss or reduction of bonuses, with intentional, reckless, fraudulent, and criminal conduct being subject to more significant sanctions.<sup>117</sup>
- May hold supervisors, managers, members of the medical staff and other healthcare professionals, corporate officers, senior leadership and other Covered Individuals charged with supervisory authority accountable for.<sup>118</sup>

<sup>113</sup> 18 NYCRR § 521-1-1.4 [f]; *see also* 70 Fed. Reg. 4858, 4876 [III][B][7] [2005].

<sup>114</sup> 18 NYCRR § 521-1-1.4 [f][1]; *see also* 70 Fed. Reg. 4858, 4876 [III][B][7] [2005].

<sup>115</sup> 18 NYCRR § 521-1.4 [a][2][viii][a]; U.S. Department of Justice Criminal Division Evaluation of Corporate Compliance Programs, [III][C] (p.19) (available at: <https://www.justice.gov/criminal-fraud/page/file/937501/download>) (last accessed on: April 19, 2023).

<sup>116</sup> 18 NYCRR 521-1-1.4 [f][2]; 63 Fed. Reg. 8987, 8995-96, [II][E][1] (1998); 70 Fed. Reg. 4858, 4876 [7] [2005].

<sup>117</sup> 18 NYCRR § 521-1.4 [a][2][viii][a]; 63 Fed. Reg. 8987, 8995, [II][E][1] (1998); U.S. Department of Justice Criminal Division Evaluation of Corporate Compliance Programs, [II] (p.9), [II][C] (p.12) (available at: <https://www.justice.gov/criminal-fraud/page/file/937501/download>) (last accessed on: April 19, 2023).

<sup>118</sup> 63 Fed. Reg. 8987, 8996, [II][E][1] (1998); *see also* U.S. Department of Justice Criminal Division Evaluation of Corporate Compliance Programs, [III][C] (pgs 18-19) (available at: <https://www.justice.gov/criminal-fraud/page/file/937501/download>) (last accessed on: April 19, 2023).



- providing inadequate supervisory oversight over subordinate staff who have engaged in compliance violations; and
- the foreseeable compliance-related failure of their subordinates.

77) The imposition of disciplinary action against any Covered Individual pursuant to the requirements and considerations outlined in this section shall be documented.<sup>119</sup>

## **XVIII. EXCLUDED PROVIDERS/INELIGIBLE PERSONS**

78) Pursuant to the Federal Civil Monetary Penalties (CMPs) Law,<sup>120</sup> Nuvance Health is prohibited from receiving payment by Federal healthcare programs (*e.g.*, Medicare, Medicaid, Tri-Care) for medical claims that stem from items or services furnished, ordered, prescribed, directed, delivered or otherwise provided by an individual or entity excluded from participation in Federal healthcare programs (hereinafter these excluded individuals or entities are collectively referred to as “Excluded Providers”).<sup>121</sup>

79) Further, as it relates to Nuvance Health entities subject to the Health Quest CIA, in addition to the above category of Excluded Providers, an ineligible person shall include Excluded Providers and an individual or entity who “has been convicted of a criminal offense that falls within the scope of 42 U.S.C. § 1320a-7(a), but has not yet been excluded....” (*i.e.*, conviction of program-related crimes; conviction relating to patient abuse; conviction relating to health care fraud; and conviction relating to controlled substance)(referred to herein, collectively, as “Ineligible Person”).<sup>122</sup>

80) In addition to the above, the Centers for Medicare and Medicaid Services (“CMS”) has promulgated regulations that, in general, restrict healthcare providers enrolled in the Medicare program from employing or contracting with individuals who are: (i) excluded from participating in Federal health care programs; and (ii) “[d]ebarred by the General Services Administration (GSA) from any other Executive Branch procurement or nonprocurement programs or activities, in accordance with the Federal Acquisition and Streamlining Act of 1994, and with the HHS Common Rule at 45 CFR Part 76”<sup>123</sup>

### Sanction Screening Process

81) To fulfill the OIG, CMS, and Health Quest CIA sanction screening requirements, Nuvance Health screens, among other data bases, the following four (4) lists:

<sup>119</sup> 18 NYCRR 521-1-1.4 [h][3]; *see also* 70 Fed. Reg. 4858, 4876 [III][B] [7] [2005]

<sup>120</sup> *See* § 1128A of the Social Security Act, 42 U.S.C. § 1320a-7a

<sup>121</sup> U.S. Department of Health and Human Services Office of Inspector General (“OIG”), *Updated Special Advisory Bulletin on the Effect of Exclusion from Participation in Federal Health Care Programs*, p. 1 (May 2013) (available at: <https://oig.hhs.gov/exclusions/files/sab-05092013.pdf>) (last accessed on: 5/8/23).

<sup>122</sup> HQ-CIA, Section III.G. *at* 10.

<sup>123</sup> 42 CFR § 424.516 [a][3][i-ii].



- The OIG List of Excluded Individuals and Entities (“LEIE”);
- State of Connecticut Quality Assurance Administrative Actions List;
- The General Services Administration’s (“GSA”) System for Award Management (“SAM”); and
- OMIG List of Restricted and Excluded Providers.

82) Additionally, the Nuvance Health, also screens Covered Individuals, as well as as any entity that it employs or otherwise conducts business with against the U.S. Department of Treasury Office of Foreign Asset Control (“OFAC”) database to ensure that Nuvance Health does not conduct any business transaction (with an individual or entity) that is prohibited under OFAC regulations (generally this includes individuals and/or entities identified by OFAC as a threat to the security, economy or foreign policy of the United States).

#### **XIX. RECORD RETENTION**

83) All ECC agenda, minutes, and documented ECC actions and activities shall be kept and maintained for a period of at least six (6) years unless a longer period of retention is required under Applicable Law or internal record retention policies and procedures.<sup>124</sup>

#### **XX. EFFECTIVE DATE AND PERIODIC RENEWAL OF THE CHARTER**

84) The Charter shall be deemed effective once: (i) executed by the Chair of the Audit and Compliance Committee of the Nuvance Health Board, the Chief Executive Officer of Nuvance Health, and the CCAPO as provided in § XIX below; and (ii) posted on the Nuvance Health website.

85) The Charter shall be: (i) updated as needed to comply with applicable compliance program requirements; and (ii) renewed on a periodic basis but in no event less than annually.<sup>125</sup> All changes and renewals to the Charter shall be approved and adopted by the Audit and Compliance Committee of the Nuvance Health Board.

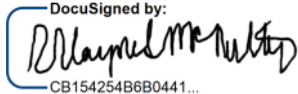


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<sup>124</sup> 18 NYCRR § 521-1.3 [b][1].

<sup>125</sup> The Charter was unanimously approved and adopted by the Audit and Compliance Committee of the Nuvance Health Board of Directors (the “Audit Committee”) on September 26, 2019, and subsequently, via unanimous written consent, the Audit Committee approved and adopted the renewal of the same on October 13, 2020, October 19, 2021 and October 26, 2022, and April 27, 2023. Note, technical changes, such as: (i) updates to the Table of Contents, hyperlinks, citations, footnotes, and inter section and paragraph references; and (ii) minor nonsubstantive grammatical corrections, were made to this Charter on May 31, 2023.



**XXI. APPROVAL/SIGNATURES**

<u>Approval</u>	<u>Date</u>
Chief Compliance, Audit & Privacy Officer  <hr/>	5/31/2023 <hr/>
President & Chief Executive Officer  <hr/>	5/31/2023 <hr/>
Chair, Audit & Compliance Committee of the Nuvance Health Board of Directors  <hr/>	6/1/2023 <hr/>



**Exhibit “1”**

**Internal Audit Charter**



## **NUVANCE HEALTH INTERNAL AUDIT CHARTER<sup>1</sup>**

### **Table of Contents**

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\* \* \*

### **I. Purpose and Mission**

The purpose of Nuvance Health’s internal audit activity is to provide independent, objective assurance and consulting services designed to add value and improve Nuvance Health’s operations.<sup>2</sup>

Assurance services involve the internal auditor’s objective assessment of evidence to provide opinions or conclusions regarding Nuvance Health’s operations, functions, processes, systems, or other subject matters.<sup>3</sup> Assurance services are an objective examination of evidence for the purpose of providing an independent assessment on

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<sup>1</sup> The *Nuvance Health Internal Audit Charter* was developed, in pertinent part, from the Institute of Internal Auditor’s (“IIA”) International Professional Practices Framework (IPPF), Supplemental Guidance - “Model Internal Audit Activity Charter” (March 2017).

<sup>2</sup> See IIA, Definition of Internal Auditing: “Internal auditing is an independent, objective assurance and consulting activity designed to add value and improve an organization’s operations. It helps an organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance process”.

<sup>3</sup> See IIA, International Standards for the Professional Practice of Internal Auditing (Standards), Introduction to the Standards, p. 2 (January 2017)



governance, risk management, and control process for the organization. Examples may include financial, performance, compliance, system security, and due diligence engagements.

Consulting services are advisory in nature and are generally performed at the specific request of an engagement client.<sup>3</sup> Consulting services are advisory and related client service activities, the nature and scope of which agreed with the client, are intended to add value and improve an organization's governance, risk management, and control processes without the internal auditor assuming management responsibility. Examples include counsel, advice, facilitation, and training.

The mission of internal audit is to enhance and protect organizational value by providing risk-based and objective assurance, advice, and insight.<sup>4</sup> The internal audit activity helps Nuvance Health accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of governance, risk management, and control processes.

## **II. Standards for the Professional Practice of Internal Auditing**

The internal audit activity will govern itself by adherence to the mandatory elements of the Institute of Internal Auditors' International Professional Practices Framework, including the Core Principles for the Professional Practice of Internal Auditing, the Code of Ethics, the *International Standards for the Professional Practice of Internal Auditing*, and the Definition of Internal Auditing.<sup>5</sup> The CAE ("CAE") will report periodically to the Chief Executive Officer and the Nuvance Health Audit and Compliance Committee of the Board of Directors regarding the internal audit activity's conformance to the Code of Ethics and the *Standards*.

## **III. Authority**

### **A. Reporting Relationships**

The CAE (whose position is served by the Nuvance Health Chief Compliance, Audit and Privacy Officer ("CCAPO")) will report functionally to the Nuvance Health Audit and Compliance Committee of the Board of Directors and administratively (i.e., day-to-day operations) to the Chief Executive Officer.<sup>6</sup>

<sup>4</sup> See IIA, International Professional Practices Framework (IPPF), Mission of Internal Audit

<sup>5</sup> See IIA, Implementation Guides for the IIA's Code of Ethics and the International Standards for the Professional Practice of Internal Auditing, Implementation Guide for Standard 1010 – Recognizing Mandatory Guidance in the Internal Audit Charter, p. 7 (December 2016)

<sup>6</sup> See IIA, Implementation Guides for the IIA's Code of Ethics and the International Standards for the Professional Practice of Internal Auditing, Implementation Guide for Standard 1100 – Independence and Objectivity, p.29 (November 2016)



B. Responsibilities of the Audit and Compliance and Executive Compensation Committees of the Nuvance Health Board of Directors

To establish, maintain, and assure that Nuvance Health's internal audit activity has sufficient authority to fulfill its duties, the Nuvance Health Board of Directors, through its Audit and Compliance Committee and Executive Compensation Committee, will do the following, respectively:

- i. The Nuvance Health Audit and Compliance Committee of the Board of Directors will:
  - Approve the internal audit activity's charter;
  - Approve the risk-based internal audit plan;
  - Approve the internal audit activity's budget and resource plan;
  - Receive communications from the CAE on the internal audit activity's performance relative to its plan and other matters;
  - Approve decisions regarding the appointment and removal of the CAE; and
  - Make appropriate inquiries of management and the CAE to determine whether there is inappropriate scope or resource limitations.
- ii. The Nuvance Health Executive Compensation Committee of the Board of Directors, in consultation with the Chair of the Nuvance Health Audit and Compliance Committee of the Board of Directors, will approve the remuneration of the CAE.



C. Access to the Nuvance Health Audit and Compliance Committee of the Board of Directors

The CAE will have unrestricted access to, and communicate and interact directly with, the Nuvance Health Audit and Compliance Committee of the Board of Directors, including in private meetings without management present.<sup>7</sup>

D. Authorization Given to the Internal Audit Activity

The Nuvance Health Audit and Compliance Committee of the Board of Directors authorizes the internal audit activity to:

- i. Have full, free, and unrestricted access to all functions, records, property, and personnel pertinent to carrying out any engagement, subject to accountability for confidentiality and safeguarding of records and information;
- ii. Allocate resources, set frequencies, select subjects, determine scopes of work, apply techniques required to accomplish audit objectives, and issue reports; and
- iii. Obtain assistance from the necessary personnel of Nuvance Health, as well as other specialized services from within or outside Nuvance Health, in order to complete the engagement.

**IV. Independence and Objectivity**

A. Responsibilities of the CAE

The CAE will:

- i. Ensure that the internal audit activity remains free from all conditions that threaten the ability of internal auditors to carry out their responsibilities in an unbiased manner, including matters of audit selection, scope, procedures, frequency, timing, and report content. If the CAE determines that independence or objectivity may be impaired in fact or appearance, the details of impairment will be disclosed to appropriate parties;<sup>8</sup>

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<sup>7</sup> See IIA, Implementation Guides for the IIA's Code of Ethics and the International Standards for the Professional Practice of Internal Auditing, Implementation Guide for Standard 1111 – Direct Interaction with the Board, p.36 (November 2016)

<sup>8</sup> See IIA, International Standards for the Professional Practice of Internal Auditing (Standards), Standard 1130 – Impairment of Independence or Objectivity, p. 5 (January 2017)



- ii. Confirm to the Nuvance Health Audit and Compliance Committee of the Board of Directors, at least annually, the organizational independence of the internal audit activity;<sup>9</sup> and
- iii. Disclose to the Nuvance Health Audit and Compliance Committee of the Board of Directors any interference and related implications in determining the scope of internal auditing, performing work, and/or communicating results.<sup>10</sup>

B. Responsibilities of Internal Auditors

Internal auditors will:<sup>11</sup>

- i. Maintain an unbiased mental attitude that allows them to perform engagements objectively and in such a manner that they believe in their work product, that no quality compromises are made, and that they do not subordinate their judgment on audit matters to others;
- ii. Have no direct operational responsibility or authority over any of the activities audited. Accordingly, internal auditors will not implement internal controls, develop procedures, install systems, prepare records, or engage in any other activity that may impair their judgment, including:
  - Assessing specific operations for which they had responsibility within the previous year;<sup>12</sup>
  - Performing any operational duties for Nuvance Health or its affiliates;
  - Initiating or approving transactions external to the internal audit activity; and

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<sup>9</sup> See, IIA, International Standards for the Professional Practice of Internal Auditing (Standards), Standard 1320 – Reporting on the Quality Assurance and Improvement Program, p. 9 (January 2017)

<sup>10</sup> See IIA, International Standards for the Professional Practice of Internal Auditing (Standards), Standard 1110.A1 – Organizational Independence, p.4 (January 2017)

<sup>11</sup> See IIA, Implementation Guides for the IIA's Code of Ethics and the International Standards for the Professional Practice of Internal Auditing, Implementation Guide for Standard 1120 – Individual Objectivity, p.42 (November 2016)

<sup>12</sup> See, IIA, International Standards for the Professional Practice of Internal Auditing (Standards), Standard 1130.A1 – Impairment of Independence or Objectivity, p. 5 (January 2017)



- Directing the activities of any Nuvance Health employee not employed by the internal audit activity, except to the extent that such employees have been appropriately assigned to auditing teams or to otherwise assist internal auditors.
- iii. Disclose any impairment of independence or objectivity, in fact or appearance, to appropriate parties;
- iv. Exhibit professional objectivity in gathering, evaluating, and communicating information about the activity or process being examined;
- v. Make balanced assessments of all available and relevant facts and circumstances; and
- vi. Take necessary precautions to avoid being unduly influenced by their own interests or by others in forming judgments.

C. CAE Roles Beyond Internal Auditing

CAE, in his/her role as CCAPO, may assume responsibilities and roles outside of the internal audit department such as, for example, serving as chief compliance and privacy officer, or the performance of activities related to enterprise-wide risk management, provided that: (i) safeguards are established to limit any impairments to the organizational independence of the Nuvance Health internal audit activity or objectivity of the CAE; (ii) such duties shall not interfere with the CCAPO's ability to perform the duties of the compliance officer outlined in the Health Quest CIA<sup>13</sup>; and (iii) any such additional roles shall report administratively to the CEO and functionally to the Nuvance Health Audit and Compliance Committee of the Board of Directors.

Conformance with this requirement may be demonstrated through the following:<sup>14</sup>

- CAE's roles and responsibilities as agreed with the Chief Executive Officer and the Nuvance Health Audit and Compliance Committee of the Board of Directors;

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<sup>13</sup> As used in this Charter, the "Health Quest CIA" shall mean the Corporate Integrity Agreement ("CIA") between the United States Department of Health and Human Services Office of Inspector General and Health Quest Systems, Inc. ("HQSI"), Health Quest Medical Practice, P.C. ("HQMP"), Health Quest Urgent Medical Care Practice, P.C. ("HQUMCP"), and Health Quest Home Health Care, Inc. ("HQHHC") (collectively "Health Quest")("Health Quest CIA")

<sup>14</sup> See IIA, Implementation Guides for the IIA's Code of Ethics and the International Standards for the Professional Practice of Internal Auditing, Implementation Guide for Standard 1112– Chief Audit Executive Roles Beyond Internal Auditing, p.42 (January 2017)



- Periodic revisions of the internal audit charter, which reflect the internal audit activity's changing roles and responsibilities;
- Minutes of the Nuvance Health Audit and Compliance Committee of the Board of Directors meetings during which the CAE discloses any potential impairment to his/her independence or objectivity, and proposed safeguards to mitigate the risk of impairment to acceptable levels.

## **V. Scope of Internal Audit Activities**

### **A. Internal Audit Activities**

The scope of internal audit activities encompasses, but is not limited to, objective examinations of evidence for the purpose of providing independent assessments to the Nuvance Health Audit and Compliance Committee of the Board of Directors, management, and outside parties on the adequacy and effectiveness of governance, risk management, and control processes for Nuvance Health. Internal audit assessments include evaluating whether:

- i. Risks relating to the achievement of Nuvance Health's strategic objectives are appropriately identified and managed;
- ii. The actions of Nuvance Health's officers, directors, employees, and contractors are in compliance with Nuvance Health's policies, procedures, and applicable laws, regulations, and governance standards;
- iii. The results of operations or programs are consistent with established goals and objectives;
- iv. Operations or programs are being carried out effectively and efficiently;
- v. Established processes and systems enable compliance with the policies, procedures, laws, and regulations that could significantly impact Nuvance Health;
- vi. Information and the means used to identify, measure, analyze, classify, and report such information are reliable and have integrity; and
- vii. Resources and assets are acquired economically, used efficiently, and protected adequately.





**B. Reporting Internal Audit Activities**

The CAE will report periodically, but in no case less than quarterly<sup>15</sup>, to the Chief Executive Officer and the Nuvance Health Audit and Compliance Committee of the Board of Directors regarding:<sup>16</sup>

- i. The internal audit activity's purpose, authority, and responsibility;
- ii. The internal audit activity's plan and performance relative to its plan;
- iii. The internal audit activity's conformance with the Institute of Internal Auditor's Code of Ethics and *Standards*, and action plans to address any significant conformance issues;
- iv. Significant risk exposures and control issues, including fraud risks, governance issues, and other matters requiring the attention of, or requested by, the Nuvance Health Audit and Compliance Committee of the Board of Directors;
- v. Results of audit engagements or other activities;
- vi. Resource requirements<sup>17</sup>; and
- vii. Any response to risk by management that may be unacceptable to Nuvance Health.

**C. Coordination and Reliance Upon Work of Other Internal and External Assurance and Consulting Service Providers**

The CAE also coordinates activities, where possible, and considers relying upon the work of other internal and external assurance and consulting service providers as needed.<sup>18</sup> The internal audit activity may perform advisory and related

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<sup>15</sup> See 18 NYCRR § 521-1-4 [b][1][iv].

<sup>16</sup> See IIA, International Standards for the Professional Practice of Internal Auditing (Standards), Standard 2060 – Reporting to Chief Executive Officer and the Board, p.11 (January 2017); see also 18 NYCRR 521-1.4 [g][1][iii] (providing that the “design, implementation, and results of any internal or external audits shall be documented, and the results shared with the [Executive Compliance Committee] and the [Audit and Compliance Committee of the Nuvance Health Board of Directors].”)

<sup>17</sup> See IIA, International Standards for the Professional Practice of Internal Auditing (Standards), Standard 2230 – Engagement Resource Allocation, p.16 (January 2017)

<sup>18</sup> See IIA, International Standards for the Professional Practice of Internal Auditing (Standards), Standard 2050 – Coordination and Reliance, p.11 (January 2017)



client service activities, the nature and scope of which will be agreed with the client, provided the internal audit activity does not assume management responsibility.

D. Opportunities for Improvement

Opportunities for improving the efficiency of governance, risk management, and control processes may be identified during engagements. These opportunities will be communicated to the appropriate level of management.<sup>19</sup>

**VI. Responsibility**

A. The CAE has the responsibility to:

- i. Submit, at least annually, to the Chief Executive Officer and the Nuvance Health Audit and Compliance Committee of the Board of Directors a risk-based internal audit plan for review and approval;<sup>20</sup> In developing the risk-based audit plan, the CAE shall, at the minimum, consider:<sup>21</sup>
  - High-level and specific organizational objectives and the strategies used to achieve them;
  - Internal sources of risk including but not limited to information provided by the Nuvance Health Executive Compliance Committee, disclosures made to the Compliance Office through the Hotline or other communication lines, exit interviews of Nuvance Health workforce members, and results of routine operational monitoring;
  - External sources of risk including but not limited to professional organization publications and seminars, OIG-issued guidance, consultants, competitors, or news media;

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<sup>19</sup> See IIA, International Standards for the Professional Practice of Internal Auditing (Standards), Standard 2100 – Nature of Work, p.12 (January 2017)

<sup>20</sup> See IIA, International Standards for the Professional Practice of Internal Auditing (Standards), Standard 2020 – Communication and Approval, p.10 (January 2017)

<sup>21</sup> For bullets ##1-8, see IIA, International Professional Practices Framework, Supplemental Guidance Practice Guide, *Developing a Risked-based Internal Audit Plan* (2020); for bullets ##9-12, see footnotes 22-25, *infra*, respectively.



- Input from key stakeholders using personal interviews and written surveys. For purposes here, key stakeholders are comprised of the Nuvance Health Audit and Compliance Committee of the Board of Directors and Senior Management;
- Opportunities that should be exploited or otherwise pursued to achieve organizational objectives;
- Information technology risks;
- Fraud risks;
- Environmental, social and governance risks;
- The following Federal healthcare program-related risk areas:<sup>22</sup>
  - Billing cycle (medical record documentation, coding, billings, claims preparation and submission, payments, claims reimbursement, patient collections, cost reporting);
  - Ordered services;
  - Medical necessity and quality of care;
  - Credentialling;
  - Mandatory reporting (including the self-disclosure and returning of overpayments);
  - Contractor, subcontractor, agent or independent contractor oversight; and
  - Other risk areas that are or should be identified by Nuvance Health by way of organizational experience.
- Risks related to compliance with the Stark Law and Anti-Kickback Statute that may stem from business and financial

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<sup>22</sup> See 18 NYCRR § 521-1.4 [g][1][i]; see also 18 NYCRR § 521-1.3 [d]



contracts, agreements or other arrangements that generate Federal healthcare program business.<sup>23</sup>

- The results of internal and external audits;<sup>24</sup> and
  - The results of audits conducted by State or Federal governmental agencies of Nuvance Health.<sup>25</sup>
- ii. Communicate to the Chief Executive Officer and the Nuvance Health Audit and Compliance Committee of the Board of Directors the impact of resource limitations on the internal audit plan;
  - iii. Review and adjust the internal audit plan, as necessary, in response to changes in Nuvance Health's business, risks, operations, programs, systems, and controls;<sup>26</sup>
  - iv. Communicate to the Chief Executive Officer and the Nuvance Health Audit and Compliance Committee of the Board of Directors any significant interim changes to the internal audit plan;
  - v. Ensure each engagement of the internal audit plan is executed, including the establishment of objectives and scope, the assignment of appropriate and adequately supervised resources, the documentation of work programs and testing results, and the communication of engagement results with applicable conclusions and recommendations to appropriate parties;<sup>27</sup>
  - vi. Follow up on engagement findings and corrective actions, and report periodically to the Chief Executive Officer and the Nuvance Health Audit and Compliance Committee of the Board of Directors any corrective actions not effectively implemented;<sup>28</sup>
  - vii. Ensure the principles of integrity, objectivity, confidentiality, and competency are applied and upheld;

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<sup>23</sup> See 18 NYCRR § 521-1.3 [d][10]

<sup>24</sup> See 18 NYCRR § 521-1.4 [g][1][ii]

<sup>25</sup> See *id.*

<sup>26</sup> See IIA, International Standards for the Professional Practice of Internal Auditing (Standards), Standard 2010 – Planning, p.10 (January 2017)

<sup>27</sup> See IIA, International Standards for the Professional Practice of Internal Auditing (Standards), Standard 2230–engagement Resource Allocation, p.16 (January 2017)

<sup>28</sup> See IIA, International Standards for the Professional Practice of Internal Auditing (Standards), Standard 2500 – Monitoring Progress, p.20 (January 2017)



- viii. Ensure the internal audit activity collectively possesses or obtains the knowledge, skills, and other competencies needed to meet the requirements of the internal audit charter;<sup>29</sup>
- ix. Ensure trends and emerging issues that could impact Nuvance Health are considered and communicated to the Chief Executive Officer and the Nuvance Health Audit and Compliance Committee of the Board of Directors as appropriate;
- x. Ensure emerging trends and successful practices in internal auditing are considered;<sup>30</sup>
- xi. Establish and ensure adherence to policies and procedures designed to guide the internal audit activity;<sup>31</sup>
- xii. Ensure adherence to Nuvance Health's relevant policies and procedures, unless such policies and procedures conflict with the internal audit charter. Any such conflicts will be resolved or otherwise communicated to the Chief Executive Officer and the Nuvance Health Audit and Compliance Committee of the Board of Directors;
- xiii. Ensure conformance of the internal audit activity with the *Standards*, with the following qualifications:
  - If the internal audit activity is prohibited by law or regulation from conformance with certain parts of the *Standards*, the CAE will ensure appropriate disclosures and will ensure conformance with all other parts of the *Standards*.
  - If the *Standards* are used in conjunction with requirements issued by other authoritative bodies, the CAE will ensure that the internal audit activity conforms with the *Standards*, even if the internal audit activity also conforms with the more restrictive requirements of other authoritative bodies.

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<sup>29</sup> See IIA, International Standards for the Professional Practice of Internal Auditing (Standards), Standard 1210 – Proficiency, p.6 (January 2017). See also 18 NYCRR § 521-1.4 [g][1] (providing that all routine audits performed by internal or external auditors concerning Federal healthcare programs (i.e., Medicaid, Medicare, Tricare) shall only be conducted by auditors who have expertise in [Federal healthcare programs], or expertise in the subject area of the audit”).

<sup>30</sup> See IIA, International Standards for the Professional Practice of Internal Auditing (Standards), Standard 2000 – Managing the Internal Audit Activity, p.10 (January 2017)

<sup>31</sup> See IIA, International Standards for the Professional Practice of Internal Auditing (Standards), Standard 2040 – Policies and Procedures, p.11 (January 2017)



- xiv. Consider recommending an appropriate framework to guide Senior Management in their pursuit of enhancing Nuvance Health's governance, risk management, and control processes, if an established framework has not been adopted; and<sup>32</sup>
- xv. Approve and maintain oversight over the work of all other internal and external assurance and consulting service providers.

## VII. Quality Assurance and Improvement Program

The internal audit activity will maintain a quality assurance and improvement program that covers all aspects of the internal audit activity. The program will include an evaluation of the internal audit activity's conformance with the *Standards* and an evaluation of whether internal auditors apply the Institute of Internal Auditor's Code of Ethics. The program will also assess the efficiency and effectiveness of the internal audit activity and identify opportunities for improvement.<sup>33</sup>

The CAE will communicate to the Chief Executive Officer and the Nuvance Health Audit and Compliance Committee of the Board of Directors on the internal audit activity's quality assurance and improvement program<sup>34</sup>, including results of internal assessments<sup>35</sup> (both ongoing and periodic) and external assessments<sup>36</sup> conducted at least once every five years by a qualified, independent assessor or assessment team from outside Nuvance Health.

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<sup>32</sup> See IIA, Implementation Guides for the IIA's Code of Ethics and the International Standards for the Professional Practice of Internal Auditing, *Implementation Guide for Standard 2100 – Nature of Work*, p.122 (December 2016)

<sup>33</sup> See IIA, International Standards for the Professional Practice of Internal Auditing (Standards), Standard 1300 – Quality Assurance and Improvement Program, p.7 (January 2017)

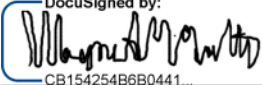
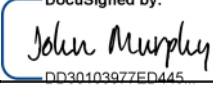

<sup>34</sup> See IIA, International Standards for the Professional Practice of Internal Auditing (Standards), Standard 1320 – Reporting on the Quality assurance and Improvement Program, p.9 (January 2017)

<sup>35</sup> See IIA, International Standards for Professional Practice of Internal Auditing (Standards), Standard 1311 – Internal Assessment, p.8 (January 2017)

<sup>36</sup> See IIA, International Standards for the Professional Practice of Internal Auditing (Standards), Standard 1312 – External Assessments, p.8 (January 2017)



**VIII. Approval/Signatures<sup>37</sup>**

<u>Approval</u>	<u>Date</u>
<p>DocuSigned by:  CB154254B6B0441</p> <hr/> <p>Chief Audit Executive</p>	<p>8/29/2023</p> <hr/>
<p>DocuSigned by:  DD30103977ED445</p> <hr/> <p>President &amp; Chief Executive Officer</p>	<p>8/29/2023</p> <hr/>
<p>DocuSigned by:  213CBC2B662E413</p> <hr/> <p>Chair, Audit &amp; Compliance Committee of the Nuvance Health Board of Directors</p>	<p>8/29/2023</p> <hr/>

<sup>37</sup> Note that, the Audit and Compliance Committee of the Nuvance Health Board of Directors (“Committee”) adopted, by unanimous vote, the *Nuvance Health Internal Audit Charter* at the Committee meeting held on June 26, 2023.

**Exhibit “2”**

**Executive Compliance Committee Charter**





**NUVANCE HEALTH**

**EXECUTIVE COMPLIANCE COMMITTEE**

**CHARTER**

**Revised: April 13, 2023<sup>1</sup>**  
**Revised: April 21, 2022**  
**Revised: May 26, 2021**  
**Revised: June 11, 2020**  
**Original: April 19, 2019**

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<sup>1</sup> The ECC Charter was revised on April 13, 2023 and subsequently approved via the unanimous written consent of the ECC on April 18, 2023, and was thereafter approved by the Audit and Compliance Committee of the Nuvance Health Board of Directors on April 27, 2023.

## EXECUTIVE COMPLIANCE COMMITTEE

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## CHARTER

### I. PURPOSE AND NECESSITY

1) The purpose and role of the Nuvance Health Executive Compliance Committee (the “ECC” or the “Committee”) is to provide advice, guidance, counsel, assistance, and other forms of support to the Nuvance Health Chief Compliance Officer (“CCO”)<sup>2</sup> related to the development, implementation, operation, and monitoring of the Nuvance Health Compliance and Ethics Program (the “Program”) with the end goal of:

- A. Promoting an organizational culture of compliance and ethics throughout the Nuvance Health enterprise;
- B. Ensuring that all patient care activities and business initiatives are adherent to and consistent with the highest ethical standards and all applicable legal standards; and
- C. Implementing, promoting, and reinforcing standards of conduct that:
  - (i) Are consistent with Nuvance Health’s mission, values, and strategic goals; and
  - (ii) Deter and prohibit incidences of fraud, waste, and abuse and other forms of unethical, unprofessional or illegal conduct.<sup>3</sup>

2) The formation of the ECC is necessary for Nuvance Health to establish and maintain an effective Program and satisfy compliance obligations stemming from:

- A. Applicable Federal and State law governing compliance programs including, without limitation, Social Services Law § 363-d and 18 NYCRR Part 521;
- B. Compliance program principles adopted by Nuvance Health; and
- C. The Corporate Integrity Agreement between the U.S. Department of Health and Human Services Office of Inspector General (“OIG”) and Health Quest Systems, Inc., Health Quest Medical Practice, P.C. (currently d/b/a Nuvance Health Medical Practice, P.C.), Health Quest Urgent Medical Care Practice, P.C., and Health Quest Home Health Care, Inc. (“Health Quest”) (collectively “Health Quest CIA”).

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<sup>2</sup> Nuvance Health’s Chief Compliance Officer also serves as the Chief Audit Executive and Chief Privacy Officer.

<sup>3</sup> See, generally, 70 Fed. Reg. 4858, 4874, § [III][A] (available at: <https://oig.hhs.gov/documents/compliance-guidance/797/012705HospSupplementalGuidance.pdf>) (last accessed on 1/20/23).

## II. DUTIES, FUNCTIONS, AND RESPONSIBILITIES<sup>4</sup>

3) In carrying out the purposes of the Program, the ECC shall be responsible for, among other important compliance endeavors, the following:

A. Coordinating with the Compliance Officer to ensure that:

- (i) Business initiatives and other activities are carried out responsibly and ethically in accordance with the Program;<sup>5</sup>
- (ii) The Program is carefully designed, implemented earnestly, and enforced in a fair manner;<sup>6</sup>
- (iii) Written policies and procedures and standards of conduct are current, accurate, and complete.<sup>7</sup> Such written policies and procedures shall, at the minimum:

- (a) Outline Nuvance Health's commitment to adhere to all Applicable Law and Federal and State standards;<sup>8</sup>
- (b) Identify governing laws, regulations, and Medicaid program policies and procedures that are applicable to the risk areas outlined in § VI, *infra*;<sup>9</sup>
- (c) Describe the how the Program is structured and the responsibilities that Covered Individuals have under the program;<sup>10</sup>
- (d) Document how the seven elements of the Program has been implemented;<sup>11</sup>
- (e) Outline the Program's ongoing operation;<sup>12</sup>
- (f) Serve as guidance to Covered Individuals on:<sup>13</sup>
  - How to address compliance issues, problems, queries, and concerns (collectively "compliance matters");
  - Expectations that all Covered Individuals report

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<sup>4</sup> See 18 NYCRR 521-1.4 [c] (providing that Nuvance Health shall outline the duties and responsibilities, membership, designation of a chair and frequency of meetings in a compliance committee charter).

<sup>5</sup> See 18 NYCRR 521-1.4 [c].

<sup>6</sup> See Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, *A Resource Guide to the U.S. Foreign Corrupt Practice Act*, [Second Edition] (July 2020)(available at: <https://www.justice.gov/criminal-fraud/file/1292051/download>)(last accessed on: April 9, 2023).

<sup>7</sup> See 18 NYCRR 521-1.4 [c][1][i]; see also 18 NYCRR 521-1.4 [a][2] (outlining the required content of the written policies and procedures that must be promulgated under the Program).

<sup>8</sup> See 18 NYCRR 521-1.4 [a][2][i].

<sup>9</sup> See 18 NYCRR 521-1.4 [a][2][i].

<sup>10</sup> See 18 NYCRR 521-1.4 [a][2][iii].

<sup>11</sup> See 18 NYCRR 521-1.4 [a][2][iii].

<sup>12</sup> See 18 NYCRR 521-1.4 [a][2][iii].

<sup>13</sup> See 18 NYCRR 521-1.4 [a][2][iv][a]

compliance matters that they become aware of to the Chief Compliance Officer, and how to report such matters;<sup>14</sup>

- (g) Set forth a strict prohibition of the engagement of unethical or illegal conduct by any Covered Individual and require Covered Individuals to report any unethical or illegal conduct that they become aware of to the Chief Compliance Officer;<sup>15</sup>
  - (h) Identify procedures and methods for Covered Individuals to report compliance matters to designated Corporate Compliance Office personnel;<sup>16</sup>
  - (i) Outline how compliance matters are addressed, investigated, documented, resolved, and the resulting outcome<sup>17</sup>
  - (j) Establish Nuvance Health's steadfast commitment to protect whistleblowers, whether Covered Individuals, patients or other Nuvance Health stakeholders, from intimidation, harassment or other forms of retaliation for the good faith participation in the Program as outlined in the Nuvance Health Whistleblower Protection Policy;<sup>18</sup>
  - (k) Set forth written escalating disciplinary standards for those Covered Individuals who engage in conduct prohibited under the Program;<sup>19</sup>
  - (l) Satisfy the employee and contractor education provision of the Deficit Reduction Act of 2005 codified at 42 USC 1396 [a][68];<sup>20</sup>
  - (m) Advocating for the allocation of sufficient funding, resources
- (iv) All Covered Individuals<sup>21</sup> receive, in a timely manner, during orientation and thereafter annually, complete compliance training and education covering the various training topics required by 18

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<sup>14</sup> See 18 NYCRR 521-1.4 [a][2][iv][a].

<sup>15</sup> See 18 NYCRR 521-1.4.

<sup>16</sup> See 18 NYCRR 521-1.4 [a][2][v].

<sup>17</sup> See 18 NYCRR 521-1.4 [a][2][vi].

<sup>18</sup> See 18 NYCRR 521-1.4 [a][2][vii].

<sup>19</sup> See 18 NYCRR 521-1.4 [a][2][viii] (providing that disciplinary procedures include a statement that "establish[es] standards for escalating disciplinary actions that must be taken in response.

<sup>20</sup> See 18 NYCRR 521-1.4 [a][2][ix]; see also 42 USC 1396 [a][68].

<sup>21</sup> For purposes of this Charter, the term "Covered Individuals" shall: (i) mean all Nuvance Health workforce members, business affiliates (e.g., contractors, subcontractors, independent contractors, third-parties, vendors), agents, and any other person or entity that, based on their role, functions or responsibilities at, or provision of services for, Nuvance Health, is affected by any of Nuvance Health's risk areas set forth in ¶ 15 of § VI, *infra*; and (ii) encompass, at the minimum, all persons and entities that meet the definition of "Affected Individuals" defined under 18 NYCRR 521-1.2 [b][1].

NYCRR Part 521 and other Federal healthcare program mandates;<sup>22</sup>

- (v) Anti-retaliation and whistleblower policies and procedures are established, promoted, and enforced;
- (vi) Patient care activities and business initiatives are conducted responsibly and ethically and adhere to the requirements of the Program;<sup>23</sup>
- (vii) Covered Individuals effectively communicate and cooperate with respect to: (i) compliance related issues, incidents, and concerns; (ii) internal and external audits; and (iii) any requirements set forth under applicable Federal and State law and Federal healthcare program directives.<sup>24</sup>
- (viii) Effective directive (*e.g.*, policies, procedures, practices, and protocols), corrective (*e.g.*, mitigation efforts, responsive measures, disciplinary action and other sanctions), detective, and preventative internal controls and enterprise risk management activities have been developed and implemented to identify, assess, prioritize, and appropriately and timely address and mitigate compliance-related issues such as those Program risks listed in ¶ 15 of § VI, *infra*.<sup>25</sup>
- (ix) The implementation of corrective measures, mitigation efforts, and disciplinary action and other sanctions in response to the commission of prohibited activities by Covered Individuals; and
- (x) On an annual basis, that a determination is made with regard to whether written compliance policies and procedures and standards of conduct are implemented and effective, assessed for adherence, and updated as necessary.<sup>26</sup>

B. Advocating for:

- (i) The distribution of appropriate funding, resources, and personnel necessary for the Chief Compliance Officer to carry out his/her duties, functions, and the requirements of his/her role;<sup>27</sup>
- (ii) The approval and execution of Program modifications as required or as reasonably deemed necessary;<sup>28</sup>

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<sup>22</sup> See 18 NYCRR 521-1.4 [c][1][i]; *see also* Office of the Medicaid Inspector General, *Compliance Program Guidance* [Element 2: Compliance Officer and Compliance Committee – Compliance Committee, ¶ [3]], p. 10.

<sup>23</sup> See 18 NYCRR 521-1.4 [c].

<sup>24</sup> See 18 NYCRR 521-1.4 [c][1][ii].

<sup>25</sup> See 18 NYCRR 521-1.4 [c][1][iv]; *see also, generally*, 63 Fed. Reg. 8987, 8994, § [III][B][2].

<sup>26</sup> See 18 NYCRR 521-1.4 [a][3].

<sup>27</sup> See 18 NYCRR 521-1.4 [c][1][iii].

<sup>28</sup> See 18 NYCRR 521-1.4 [c][1][v].

- C. Assisting and supporting the CCO with the following:
- (i) The development of training and education initiatives;
  - (ii) Reviewing, discussing, advising, and affirmatively participating in the implementing of the Program, which includes, for example, the adoption of methods, practices, policies, and procedures to carryout compliance initiatives to facilitate the satisfaction of Program elements conducted by Nuvance Health and its affiliated entities;
  - (iii) Assessing existing policies and procedures that address compliance risk areas;
  - (iv) The engagement of activities that promote institutional compliance with applicable Federal and State law and Federal healthcare program and private payor requirements;
  - (v) Determining what strategies and approaches are necessary to facilitate adherence with Program requirements and “detection of any potential violations, such as through hotlines and other fraud reporting mechanisms;”<sup>29</sup>
  - (vi) Overseeing the CCO’s monitoring of internal and external audits and investigations for the purposes of identifying trends/deficiencies and implementing corrective action;<sup>30</sup>
  - (vii) As set forth in ¶ 15 of § VI, *infra*, oversee the development of internal controls, in conjunction with the relevant departments, to reduce the likelihood of occurrence of compliance-related risks;
  - (viii) Developing (or ensuring the development of) new standards of conduct and policies and procedures, as needed, working in conjunction with appropriate departments, to promote compliance with legal and ethical requirements;
- D. Receiving reports:
- (i) Concerning, and where appropriate and necessary based on the content and nature of such reports, supporting the CCO in formulating and implementing corresponding appropriate responses thereto, the following: (i) Health Quest CIA compliance and Program self-assessments; and (ii) the progress made with regard to the adoption, implementation, and maintenance of the compliance

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<sup>29</sup> HHS Office of Inspector General, *OIG Compliance Guidance to Hospitals*, 63 Fed. Reg. 8987, 8994, § [III][B][2].

<sup>30</sup> See Health Quest CIA § [III][A][2]

program;<sup>31</sup>

- (ii) Related to any internal and external audit observations, findings, and results<sup>32</sup>
- (iii) Receiving reports related to annual compliance program assessments, which are performed to determine whether: (i) Federal healthcare program compliance program requirements have been met; (ii) the Program is effective; and (iii) whether the Program requires modification or corrective action is warranted,<sup>33</sup>

### III. SCOPE

4) The compliance oversight functions of the Program and the purposes, functions, and responsibilities of the ECC shall extend to all Nuvance Health facilities, units, and affiliate entities including, without limitation, the following:

- A. Nuvance Health;
- B. Health Quest Systems, Inc. (“HQSI”);
- C. Western Connecticut Health Network, Inc. (“WCHN”);
- D. Danbury Hospital and its New Milford campus;
- E. Eastern New York Medical Services, P.C.;
- F. Health Quest Home Care, Inc.;
- G. Nuvance Health Medical Practice, P.C. (“NHMP”)
- H. Hudson Valley Cardiovascular Practice, P.C. (“the Heart Center”);
- I. Vassar Health Quest Medical Practice of Connecticut, Inc.;
- J. Northern Dutchess Hospital;
- K. Northern Dutchess Residential Health Care Facility, Inc. (the Thompson

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<sup>31</sup> See 18 NYCRR 521-1.4 [b][1][iv](providing that the Chief Compliance Officer is responsible for “reporting directly, on a regular basis, but no less frequently than quarterly, to the required provider’s . . . compliance committee on the progress of adopting, implementing, and maintaining the compliance program[.]”); Office of the Medicaid Inspector General, *Compliance Program Guidance* [Element 2 - Compliance Officer and Compliance Committee, [1]], p.9 (1/23); see also, generally, Health Quest CIA § [II][A][2] (pgs. 3-4).

<sup>32</sup> See 18 NYCRR 521-1.4 [g][1][iii].

<sup>33</sup> See 18 NYCRR 521-1.4 [g][2], [g][2][iv].



House);

- L. The Norwalk Hospital Association;
- M. Putnam Hospital;
- N. Sharon Hospital;
- O. Taconic IPA, Inc. (“Taconic ACO”);
- P. Vassar Brothers Medical Center;
- Q. Western Connecticut Home Care Inc.;
- R. Western Connecticut Health Network Physician Hospital Organization ACO, Inc.;
- S. SWC Corporation;
- T. Western Connecticut Health Network Affiliates, Inc. (Danbury Diagnostic Imaging, Ridgefield Diagnostic Imaging, and Nuvance Health Ambulance);
- U. Nuvance Health Medical Practice CT, Inc. (“NHMP-CT”); and
- V. The Foundations of Nuvance Health.

#### **IV. MEMBERSHIP/COMPOSITION OF COMMITTEE**

##### Composition of the Committee, Committee Chair, and Selection of Members

5) The ECC benefits from being composed of members having different perspectives based on the individual’s varying responsibilities in the organization, such as operations, finance, audit, human resources, and clinical management, as well as employees and managers of key operating units. All ECC members shall have the requisite seniority and comprehensive experience<sup>34</sup> within their respective departments to implement any necessary changes to policies and procedures as recommended by the ECC.<sup>35</sup> The ECC shall be chaired by the Chief Compliance Officer.<sup>36</sup>

- 6) To that end, the ECC shall initially consist of the following members by title:
  - A. Chief Compliance Officer (Chair);

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<sup>34</sup> See 18 NYCRR 521-1.4 [c][2]

<sup>35</sup> See generally OIG, *OIG Supplemental Compliance Program Guidance for Nursing Facilities*, 65 Fed Reg. 14289, 14300 §[II][C][2] (2000).

<sup>36</sup> See Health Quest CIA § [III][A][2], p.4

- B. President & Chief Executive Officer;
- C. Chief Operating Officer;
- D. Chief Legal Officer & General Counsel;
- E. Chief Medical Officer;
- F. The President of each Nuvance Health Hospital;
- G. Chief Physician Executive;
- H. Chief Operating Officer of the Medical Practices;
- I. Chief Financial Officer;
- J. Chief Human Resources Officer;
- K. Chief Information Officer;
- L. Chief Information Security Officer;
- M. A Vice President of Medical Affairs;<sup>37</sup> and
- N. Deputy Chief Compliance Officer.

7) The ECC shall, by official Committee action, appoint additional members to serve on the Committee as necessary to carry out the functions, duties, and purposes of the Committee.

#### Changes in the Composition of the Committee

8) Pursuant to the Health Quest CIA, Nuvance Health on behalf of Health Quest, will provide the OIG written notice of any changes in the composition of the ECC or any actions or changes that would affect the ECC's ability to perform the duties necessary to meet the obligations of the Health Quest CIA within 15 days post such change.<sup>38</sup>

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<sup>37</sup> The appointment of a Vice President of Medical Affairs ("VPMA") to serve as a member of the ECC shall be for a term of one year. At the end of the term, the CCO shall, in consultation with the President and Chief Executive Officer, nominate one of the Nuvance Health hospital VPMA's (who has not previously served on the ECC) to serve on the ECC for the subsequent year. All nominations must be confirmed by vote of the ECC as set forth in ¶¶ 25-26 of § IX, *infra*. Once a VPMA from each Nuvance Health hospital has served on the ECC, a VPMA who previously served on the ECC may be nominated to serve on the ECC again.

<sup>38</sup> See Health Quest CIA § [III][A][2], p. 4.

## V. COMPLIANCE PROGRAM REQUIREMENTS

### Key Components

9) Generally, in order for Nuvance Health to establish and maintain an effective Program, said Program will be reasonably designed to:

- A. Promote the highest level of corporate responsibility;
- B. Demonstrate Nuvance Health's commitment to ethical conduct and compliance with all: (i) applicable Federal and State laws<sup>39</sup> (collectively "Applicable Law"); Federal health program and private payor requirements; and (ii) requirements and obligations set forth under the Health Quest CIA;
- C. Encourage the good faith participation in the Program through the mandatory reporting of known or suspected compliance violations;
- D. Protect whistleblowers from retaliation; and
- E. Facilitate the imposition of sanctions and/or other disciplinary measures against Covered Individuals that engage in prohibited activities or otherwise fail to affirmatively participate in the Program.

### Understanding the Seven (7) Key Elements of an Effective Compliance and Ethics Program

10) Nuvance Health is committed to compliance with applicable legal requirements and sound ethical standards, and refers to Federal and State advisory materials for guidance, including but not limited to:

- A. 1998 and 2005 *OIG Compliance Program Guidance for Hospitals and Supplemental Compliance Program Guidance for Hospitals*, respectively;<sup>40</sup>
- B. 2000 *OIG Compliance Program for Small and Individual Group Practices*;<sup>41</sup>
- C. 2000 and 2008 *OIG Compliance Program Guidance for Nursing Facilities and Supplemental Compliance Program Guidance for Nursing Facilities*, respectively;<sup>42</sup>

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<sup>39</sup> For purposes of the Charter, the term "law" shall mean all duly enacted applicable criminal, civil, and administrative laws, rules, codes, ordinances, and regulations and corresponding applicable case law. For purposes of this Charter, the term "State", which includes any local government within said State, shall mean: (i) the State of New York and the State of Connecticut; (ii) any State in which Nuvance Health is an enrolled provider in said State's Medicaid program and, as a condition to participate in said program and receive corresponding Medicaid funds, must adhere to applicable laws; and (iii) consistent with the U.S. Constitution, any State that has promulgated laws that the Nuvance Health Office of Legal Affairs has determined apply to Nuvance Health.

<sup>40</sup> See 63 Fed. Reg. 8987 (1998); 70 Fed. Reg. 4858 (2005).

<sup>41</sup> See 65 Fed. Reg. 59434 (2000).

<sup>42</sup> See 65 Fed. Reg. 14289 (2000); 73 Fed. Reg. 56832 (2008).

- D. 1998 *OIG Compliance Program Guidance for Home Health Agencies*;<sup>43</sup>
- E. 2021 United States Sentencing Commission Guidelines Manual, § 8B2.1 - *Effective Compliance and Ethics Program*;<sup>44</sup>
- F. New York State Office of the Medicaid Inspector General (“OMIG”) *New York State Social Services Law 363-d and Title 18 New York Codes of Rules and Regulations Part 521 Compliance Program Review Guidance* (2016);<sup>45</sup>
- G. *OMIG Compliance Program Guidance* (Jan 2023) and accompanying *OMIG Summary of Assessment of Public Comment*;<sup>46</sup>
- H. *OMIG Compliance Program Review Module*;<sup>47</sup>
- I. *OMIG Self-Disclosure of Medicaid Overpayments* guidance documents;<sup>48</sup>
- J. U.S. Department of Justice, Criminal Division Fraud Section, *Evaluation of Corporate Compliance Programs* (updated March 2023).<sup>49</sup>
- K. *OIG’s Compliance Program Guidance for Third-Party Medical Billing Companies*, 63 Fed. Reg. 70138 (1998).<sup>50</sup>
- L. Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, *A Resource Guide to the U.S. Foreign Corrupt Practice Act*, [Second Edition] (July 2020)<sup>51</sup>

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<sup>43</sup> See 63 Fed. Reg. 42410 (1998).

<sup>44</sup> See 2021 United States Sentencing Commission Guidelines Manual § 8B2.1

<sup>45</sup> See New York State Office of the Medicaid Inspector General, *New York State Social Services Law 363-d and Title 18 New York Codes of Rules and Regulations Part 521 Compliance Program Review Guidance* (2016), available at: <https://omig.ny.gov/media/54376> (last accessed on May 25, 2021).

<sup>46</sup> See *OMIG Compliance Program Guidance* (with Addendums A and B) (available at: <https://omig.ny.gov/compliance/compliance-library>) (last accessed on 4/10/23); see also *OMIG Summary of Assessment of Public Comment* (available at: <https://omig.ny.gov/information-resources/laws-and-regulations#Regulations>) (last accessed on 4/10/23).

<sup>47</sup> See *OMIG Compliance Program Review Module* (available at: <https://omig.ny.gov/compliance/compliance-library>) (last accessed on: 4/10/23).

<sup>48</sup> *OMIG Self-Disclosure of Medicaid Overpayments guidance documents - Self-Disclosure Program Requirements Guidance, Frequently Asked Questions & Self-Disclosure Submission Information and Instructions* (available at: <https://omig.ny.gov/provider-resources/self-disclosure>) (last accessed on 4/10/23).

<sup>49</sup> The U.S. Department of Justice, Criminal Division Fraud Section, *Evaluation of Corporate Compliance Programs* (updated March 2023) (available at: <https://www.justice.gov/criminal-fraud/page/file/937501/download>) (last accessed on March 21, 2023).

<sup>50</sup> When contracting with third-party billing companies, Nuvance Health considers *OIG’s Compliance Program Guidance for Third-Party Medical Billing Companies*, 63 Fed. Reg. 70138 (1998).

<sup>51</sup> See Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and

11) Nuvance Health consists of numerous entities that are enrolled providers in the New York State Medical Assistance Program (“NYS Medicaid”), and it complies with the requirements for provider compliance programs set forth under Social Services Law § 363-d and its implementing fraud, waste, and abuse prevention regulations found at 18 NYCRR Part 521 (collectively hereinafter referred to as “Part 521”).<sup>52</sup>

12) To meet the requirements for an effective compliance program as described in the guidance documents listed in ¶ 11 of this section, *supra*, and Part 521, Nuvance Health’s Program must, at the minimum, be comprised of seven (7) key elements, which are provided below in summary detail:

- A. **ELEMENT # 1** – The development and dissemination of written policies and procedures including, without limitation, standards of conduct (*e.g.*, code of ethics, code of conduct), that promote Nuvance Health’s commitment to carrying out its operations in a legally compliant and ethical manner.<sup>53</sup> Written policies and procedures shall, among other things:
- (i) Apply to all Covered Individuals and must identify Federal and State laws that apply to Nuvance Health’s risks areas set forth in ¶ 15 of § VI, *infra*;<sup>54</sup> and
  - (ii) Shall require Covered Individuals to refuse to participate in unethical and illegal conduct and to report unethical or illegal conduct that they are aware of to the CCO;<sup>55</sup> and
  - (iii) Shall outline Nuvance Health whistleblower protection/antiretaliation policies.<sup>56</sup>
- B. **ELEMENT # 2** - The designation of a Chief Compliance Officer (“CCO”) to operate and monitor the day-to-day activities of the Program.<sup>57</sup> Additionally, the establishment of a compliance committee for the purpose of, among other things:<sup>58</sup>
- (i) Providing advice, counsel, assistance, and other support to the CCO;
  - (ii) Coordinating Program implementation activities;<sup>59</sup>

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Exchange Commission, *A Resource Guide to the U.S. Foreign Corrupt Practice Act*, [Second Edition] (July 2020)(available at: <https://www.justice.gov/crimina-fraud/file/1292051/download>)(last accessed on: April 9, 2023).

<sup>52</sup> See OMIG Summary of Regulation (18 NYCRR Part 521) (available at:

[file:///C:/Users/390035/Downloads/MED282200016\\_Part521\\_Adopted%20\(4\).pdf](file:///C:/Users/390035/Downloads/MED282200016_Part521_Adopted%20(4).pdf))(last accessed on: 4/10/23).

<sup>53</sup> See 18 NYCRR 521-1.4 [a][1].

<sup>54</sup> See 18 NYCRR 521-1.4 [a][2][i].

<sup>55</sup> See 18 NYCRR 521-1.4 [a][2][iv][b].

<sup>56</sup> See 18 NYCRR 521-1.4 [a][2][vii].

<sup>57</sup> See 18 NYCRR 521-1.4 [b].

<sup>58</sup> See ¶ 3 of § II, *supra*, for detailed summary of the roles, functions, and responsibilities of the ECC, which serves as Nuvance Health’s compliance committee.

<sup>59</sup> See 18 NYCRR 521-1.4 [c].

- C. **ELEMENT # 3** – The development of training and education for all Covered Individuals.<sup>60</sup> This includes, for example, the following:
- (i) Completion of annual training by Covered Individuals;<sup>61</sup>
  - (ii) Training and education on the risk areas set forth in ¶ 15 of § VI, *infra*;<sup>62</sup> and
  - (iii) The development and maintenance of a training plan.<sup>63</sup>
- D. **ELEMENT # 4** – The establishment and implementation of open, accessible, published, and effective lines of communication between the CCO and all Covered Individuals.<sup>64</sup> Additionally, the maintenance of a process, such as a publicized confidential compliance helpline, to receive compliance concerns, reports, requests for guidance, complaints, and other compliance-related issues in an anonymous and confidential manner directly to the CCO.<sup>65</sup>
- E. **ELEMENT #5** – The establishment and fair and consistent enforcement of written disciplinary standards, policies, and procedures for Covered Individuals who have failed to comply with Applicable Law and Nuvance Health’s internal standards of conduct (or who have otherwise engaged in prohibited activities) and encourage good faith participation in the compliance program by Covered Individuals;<sup>66</sup>
- F. **ELEMENT # 6** - The performance of auditing and monitoring to facilitate the ongoing and routine monitoring of the Program and to identify compliance-related risks. This includes, but is not limited to:
- (i) The performance of internal and external audits focused on compliance program risk areas outlined in OMIG Fraud, Waste, and Abuse Prevention program regulations including, without limitation, risk identified by organizational experience;<sup>67</sup>
  - (ii) The performance of exclusion/ineligible persons checks every 30 days;<sup>68</sup>
  - (iv) The performance of an annual Program review to determine:<sup>69</sup>
    - Compliance with Federal and State law, Federal healthcare program requirements, and 18 NYCRR Part 521;

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<sup>60</sup> See 18 NYCRR 521-1.4 [d].

<sup>61</sup> See 18 NYCRR 521-1.4 [d][2].

<sup>62</sup> See 18 NYCRR 521-1.4 [d][1][i].

<sup>63</sup> See 18 NYCRR 521-1.4 [d][4].

<sup>64</sup> See 18 NYCRR § 521-1.4 [e][1-2].

<sup>65</sup> See 18 NYCRR § 521-1.4 [e][1-3].

<sup>66</sup> See 18 NYCRR 521-1.4 [f].

<sup>67</sup> See 18 NYCRR § 521-1.4 [g][1][i].

<sup>68</sup> See 18 NYCRR § 521-1.4 [g][3].

<sup>69</sup> See 18 NYCRR § 521-1.4 [g][2].

- Program effectiveness; and
  - Whether any part of the Program requires revision or corrective action.
- G. **ELEMENT # 7** – Responding to Compliance Issues, which includes the establishment of processes, policies, and procedures concerning the prompt responding to compliance issues once raised and received, or learned through internal auditing and monitoring.<sup>70</sup> This includes the investigation of potential offenses, the development of corrective action plans in response to confirmed violations of the Program and/or Applicable Law, as well as the mandatory reporting and refunding of any overpayments.<sup>71</sup>

How does the ECC assist in addressing the Seven (7) Elements of an Effective Program?

- 13) The ECC supports the implementation of the Program as follows:
- A. Supports and coordinates with the CCO to ensure the development and dissemination of written standards of conduct to be adhered to by all Nuvance Covered Individuals, which partly addresses **Element # 1**. Additionally, supports the CCO in the development and enforcement of whistleblower protection/anti-retaliation policies and procedures, which also addresses **Element # 1**.
  - B. Serves as the compliance committee for the purposes of, among other things, supporting and coordinating Program-related activities with the CCO, which partially addresses **Element # 2**;
  - C. Provides coordination and support to the CCO regarding the development of compliance-related training and education programs, which partly addresses **Element # 3**;
  - D. Serves as an avenue of communication between the CCO and Nuvance Health Executive Leadership, which partly addresses **Element # 4**;
  - E. Supports the CCO to ensure that disciplinary standards comply with compliance program regulatory requirements and guidance, which partly addresses **Element # 5**;
  - F. Oversees the monitoring of internal and external audits and investigations for the purpose of identifying trends/deficiencies and implementing corrective action, which partly addresses **Element # 6**;
  - G. Where, at the CCO’s discretion deemed appropriate and necessary (and in

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<sup>70</sup> See 18 NYCRR § 521-1.4 [h]

<sup>71</sup> See 18 NYCRR § 521-1.4 [h][1-4]

a manner that preserves the investigatory independence of the CCO, the confidentiality of the investigation and fact witnesses, and the integrity of the investigation), provides advice and counsel to the CCO on the conduct of internal investigations, which partly addresses **Element # 7**.

Additional Requirements related to Nursing Home Facilities and Accountable Care Organizations

14) In addition to the principles and legal requirements described above, with respect to nursing home facilities, Nuvance Health meets the requirements set forth in 42 CFR § 483.85. Further, with regard to Nuvance Health’s activity through its Accountable Care Organization, Nuvance Health meets the compliance program obligations set forth in 42 CFR §§ 425.300 *et seq.*

**VI. APPLICABLE COMPLIANCE RISK AREAS**

15) With regard to the duties, functions, and role of the ECC outlined in ¶ 3 of § II, *supra*, the following compliance risk areas shall be addressed:

- A. Contractor, subcontractor, agent, independent contractor, or third-party vendor oversight;<sup>72</sup>
- B. Excluded persons and entities (collectively “providers” or “excluded providers”) and other ineligible persons or entities;<sup>73</sup>
- C. Credentialing;<sup>74</sup>
- D. Order services;<sup>75</sup>
- E. Medical necessity;<sup>76</sup>
- F. Quality of care;<sup>77</sup>
- G. Medical record documentation;<sup>78</sup>
- H. Coding;<sup>79</sup>

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<sup>72</sup> See 18 NYCRR 521-1.3 [d][9]; see also 42 USC 1396a [a][68][A].

<sup>73</sup> See 18 NYCRR 521-1.3 [d][10]; see also 18 NYCRR § 521-1.4 [g][3]; see, also, generally, U.S. Department of Health and Human Services, Office of Inspector General, *OIG Special Advisory Bulletin on the Effect if Exclusion from Participation in Federal Health Care Programs* (Updated, 5/8/13) (available at: <https://oig.hhs.gov/exclusions/files/sab-05092013.pdf>) (last accessed on: 3/29/23).

<sup>74</sup> See 18 NYCRR 521-1.3 [d][8]

<sup>75</sup> See 18 NYCRR 521-1.3 [d][3]

<sup>76</sup> See 18 NYCRR 521-1.3 [d][4]

<sup>77</sup> See 18 NYCRR 521-1.3 [d][5]

<sup>78</sup> See 18 NYCRR 521-1.3 [d][10]

<sup>79</sup> See 18 NYCRR 521-1.3 [d][10]; see also CMS, DRA 6032 – Employee Education About False Claims Recovery – Frequently Asked Questions (available at: <https://downloads.cms.gov/cmsgov/archived-downloads/SMDL/downloads/smd032207att1.pdf>) (last accessed on 3/29/23; see also CMS, Center for



- I. Billings;<sup>80</sup>
- J. Payments;<sup>81</sup>
- K. Claims development and submission;
- L. Claims reimbursement;
- M. Patient collections;<sup>82</sup>
- N. Mandatory reporting and the identification and refunding of overpayments<sup>83</sup>
- O. Cost reporting;<sup>84</sup>
- P. Governance;<sup>85</sup>
- Q. Improper inducements, referrals, incentives, or financial arrangements such as activities prohibited under the Stark Law and Anti-kickback statute as well as other improper inducements; (*e.g.*, any illegal, unethical or otherwise improper arrangement or other business activities involving the following: financial arrangements -- including-administrative and strategic arrangements -- between hospitals and physicians in group practice and hospital-based physicians; medical directorships; hospital incentives to physicians; physician compensation; professional services arrangements; gain and profit sharing arrangements; space rentals; equipment rentals; personal services and management contracts; sale or purchase of physician practices; ambulatory surgical center arrangements; managed care and risk sharing arrangements; and other financial arrangements with outside entities to whom NHMP or NHMP-CT, or other Nuvance Health provider entities, may refer Federal health care program business);<sup>86</sup>

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Medicaid and State Operations, Dear State Medicaid Director Letter dated 12/13/06):  
<https://downloads.cms.gov/cmsgov/archived-downloads/SMDL/downloads/SMD121306.pdf> (last accessed on 3/29/23)

<sup>80</sup> See 18 NYCRR 521-1.3 [d][1]

<sup>81</sup> See 18 NYCRR 521-1.3 [d][2]

<sup>82</sup> See 18 NYCRR 521-1.3 [d][10]

<sup>83</sup> See 18 NYCRR 521-1.3 [d][7], [d][10].

<sup>84</sup> See 18 NYCRR 521-1.3 [d][10]

<sup>85</sup> See 18 NYCRR 521-1.3 [d][6]

<sup>86</sup> See 18 NYCRR 521-1.3 [d][10]; see also *OIG Compliance Program Guidance for Hospitals*, 63 Fed. Reg. 8987, 8990, § [II][A][2]; *OIG Compliance Program for Individual and Small Group Physician Practices*, 65 Fed. Reg. 59434, 59440, § [II][B][Step 2][1][d] (noting that, according to the OIG, “[i]n particular, arrangements with hospitals, hospices, nursing facilities, home health agencies, durable medical equipment suppliers, pharmaceutical manufacturers and vendors are areas of potential concern.”)

- R. Medical education accreditation;<sup>87</sup>
- S. Human subject research protection requirements (*e.g.*, requirements under the Food Drug Administration, Office of Human Research Protection, National Institute of Health, State of New York and Connecticut research regulatory protections, or other applicable human subject research protection regulations, policies and procedures);<sup>88</sup>
- T. Antitrust (*e.g.*, Joint ventures, affiliations, clinical integration, financial integration, market share analysis);<sup>89</sup>
- U. Anti-markup (*i.e.* payment limitations to technical components of diagnostic tests purchased from outside suppliers);<sup>90</sup>
- V. Emergency Medical Treatment and Labor Act (EMTALA);<sup>91</sup>
- W. Information Governance and Record management;<sup>92</sup>
- X. Privacy and security of patient, employee or other confidential information (*e.g.* HIPAA and relevant state privacy laws);<sup>93</sup> and
- Y. Other risk areas that are or should be identified through the organizational risk identification, assessment, and prioritization process or otherwise should, with due diligence, be identified through the appropriate implementation of the Program, including, for example, the following:<sup>94</sup>
  - (i) Risks related to specific provider types including, for example, hospitals, nursing facilities, medical practice groups, accountable care organizations, home care services, laboratories, and ambulance services; and
  - (ii) Risks related to workplace safety, labor and employment, environmental care.

## VII. REPORTING TO PRESIDENT/CHIEF EXECUTIVE OFFICER AND THE AUDIT AND COMPLIANCE COMMITTEE OF THE BOARD OF DIRECTORS

- 16) The ECC shall report directly to, and shall be accountable to, the President and

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<sup>87</sup> See 18 NYCRR 521-1.3 [d][10];

<sup>88</sup> See 18 NYCRR 521-1.3 [d][10];

<sup>89</sup> See 18 NYCRR 521-1.3 [d][10];

<sup>90</sup> See 18 NYCRR 521-1.3 [d][10];

<sup>91</sup> See 18 NYCRR 521-1.3 [d][10];

<sup>92</sup> See 18 NYCRR 521-1.3 [d][10];

<sup>93</sup> See 18 NYCRR 521-1.3 [d][10];

<sup>94</sup> See 18 NYCRR 521-1.3 [d][10];

Chief Executive Officer and the Audit and Compliance Committee of the Nuvance Health Board of Directors (“Audit and Compliance Committee”).<sup>95</sup> The Audit and Compliance Committee shall be responsible for the review and oversight of the ECC and shall make reasonable inquiries into the performance of the ECC.<sup>96</sup>

17) The CCO shall report on a quarterly basis the activities and actions taken by the ECC and any Subcommittees thereto to the Audit and Compliance Committee.

18) Once approved by the members of the ECC, the ECC Charter shall be subsequently approved by the Audit and Compliance Committee.

## VIII. CONFIDENTIALITY/PRIVILEGES

19) Unless otherwise directed by the ECC, CCO, Chief Legal Officer or required by Applicable Law, all Committee members shall maintain the confidentiality of all agendas, minutes, meeting materials, and oral discussions at such meetings. All Committee agenda, minutes, and reports shall be marked as “Confidential,” as they may contain confidential patient, workforce member, proprietary, investigatory, or self-evaluative/self-critical analysis, attorney work-product, or attorney-client privileged information, and have been prepared with the expectation that they would be kept confidential and be consistently maintained as confidential.

20) The discussions held at ECC meetings may involve confidential investigatory information and other confidential information subject to the confidentiality protections set forth in N.Y. Not-For-Profit Corp. Law § 715-b[b][1], Social Services Law § 363-d [2][d], 10 NYCRR § 521.1.4 [e][4], CPLR § 3101 [b], [c]., and Conn. R. Evid. 5-1.

21) Any information permitted to be disclosed outside of the Committee under this subdivision shall be limited to the minimum necessary in light of the reason for the disclosure.

## IX. CONDUCT OF MEETINGS

### Meeting Schedule

22) The ECC will meet on a regular basis and as needed, but in no event less than on a quarterly basis, with the expectation that additional meetings may be required to adequately fulfill all the obligations and duties outlined in this Charter. All Committee members are expected to attend each meeting in person or via telephone or video conference, with the expectation that every effort be made to attend in person.

23) The CCO or his/her designee will make reasonable efforts to meet with and brief each member who was unable to attend a convened ECC meeting due to: (i) other pressing and important Nuvance Health business; or (ii) infirmity, vacation or other recognized leave. Such briefing shall:

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<sup>95</sup> See 18 NYCRR 521-1.4 [c][3]

<sup>96</sup> See Health Quest CIA § [III][A][3][a] (p.4).

- A. Review the topics covered in the missed ECC meeting; and
- B. Be documented and maintained by the Corporate Compliance Office in accordance with internal record retention policies and procedures.

#### Preparation of Meeting Agendas and Supporting Documents

24) Meeting agendas and supporting documents will be prepared for every meeting by the Chair of the ECC or his/her designee.

#### Official ECC Actions

25) All official actions taken by the Committee must be approved by a majority of a quorum of the ECC members present at an ECC meeting. For purposes of this Charter, a quorum is a majority of the voting members of the ECC and does not include any vacant Committee seats.

26) Any action which may be taken at a meeting of the ECC may be taken without a meeting if a consent in writing, setting forth the action so taken, or to be taken, shall be signed by all members of the ECC entitled to vote with respect to the subject matter of such meeting. Such consent shall be filed with the minutes of the next convening meeting of the ECC.

27) Any official action taken by the ECC that may materially affect the Program on a whole must also be approved by the Audit and Compliance Committee of the Nuvance Health Board of Directors

28) Notwithstanding anything stated hereunder to the contrary, nothing contained herein shall be in any way construed to alter, limit, abridge, restrict or otherwise affect the CCO's day-to-day Program, reporting, and ethical responsibilities as outlined and required under Applicable Law, Health Quest CIA, Nuvance Health internal policies and procedures, and the Code of Ethics applicable to compliance, audit, privacy, and anti-fraud professionals.

#### Minutes/Recording Secretary

29) Minutes will be recorded to document all formal actions taken by the ECC. Unless otherwise designated by the CCO, the Deputy Chief Compliance Officer or the Administrative Coordinator of the Corporate Compliance Office shall serve as recording secretary of ECC.

30) Pursuant to the Health Quest CIA, the minutes of the ECC meetings shall be made available to the OIG upon request.

**X. ESTABLISHMENT OF ECC SUBCOMMITTEES, *AD HOC* AND SPECIAL COMMITTEES, AND TASK FORCES**

Establishment of Subcommittees of the ECC

31) The ECC, by official action, may establish Subcommittees, ad hoc committees, and special committees as it deems necessary to carry out the purposes of the Committee. Examples of Subcommittees that the ECC may wish to consider establishing are as follows:

- A. Compliance and Quality;
- B. Labor and Employment/Human Resources;
- C. Human Subject Research;
- D. Privacy, Security and Record Management;
- E. Compliance, Billing and Finance;
- F. Physician Transactions;
- G. Home Care Specific Compliance Committee;
- H. Revenue Integrity
- I. Medical Group Specific Compliance Committee(s); and
- J. Hospital/Nursing Home Specific Compliance Committees.

Taskforces

32) The CCO, at his or her discretion, may establish taskforces of the ECC, consisting of members of the ECC or other Nuvance Health leadership, to:

- A. Investigate matters or to further develop compliance initiatives; or
- B. Address potential problems identified by the CCO or ECC. The members of an established taskforce may vary depending upon the issue and matter being reviewed, assessed, or otherwise addressed.<sup>97</sup>

Report to the ECC

33) All activities carried out by the Subcommittees, *ad hoc*, special committees or taskforces, as described above, shall be reported back to the ECC.

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<sup>97</sup> See, generally, OIG, *OIG Supplemental Compliance Program Guidance for Nursing Facilities*, 65 Fed Reg. 14289, 14300, §[II][C][2] (2000).

## XI. RECORD RETENTION

34) All ECC agenda, minutes, and documented ECC actions and activities shall be kept and maintained for a period of at least six (6) years unless a longer period of retention is required under Applicable Law or internal record retention policies and procedures.<sup>98</sup>

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<sup>98</sup> 18 NYCRR § 521-1.3 [b][1].