



POLICY INFORMATION

Policy Title: Government Investigations Policy and Procedure

Departmental Owner: Chief Compliance, Audit, and Privacy Officer

Version Effective Date: 11/30/2024

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SCOPE

This policy applies to the following individuals and/or groups:

All Covered Individuals (e.g., all Nuvance workforce members, business affiliates, and agents) as defined below under Definitions.

This policy applies to all above listed Nuvance Health workforce members including but not limited to the following locations:

All of the below entities

Nuvance Health Systems

Danbury Hospital (including New Milford Hospital Campus)

Northern Dutchess Hospital

Norwalk Hospital

Putnam Hospital

Sharon Hospital

Vassar Brothers Medical Center

Health Quest Systems, Inc. "(HQSI)"

Health Quest Home Care, Inc

Hudson Valley Cardiovascular Practice, P.C. (aka The Heart Center) ("HVCP")

Other HQSI-affiliated Entities Not Listed

Western Connecticut Home Care, Inc ("WCHN")

Western Connecticut Health Network Physician Hospital Organization ACO, Inc.

Western Connecticut Home Care, Inc

Other WCHN-affiliated Entities Not Listed

Nuvance Health Medical Practices (NHMP PC, NHMP CT, ENYMS & HVCP)

DEFINITIONS

For purposes of this policy, the terms listed below shall have the following meanings:

Site Executive: Member of management responsible for operations of the area under investigation.

Covered Individual: Any Nuvance Health ("Nuvance") workforce member, business affiliate, or agent, as those terms are described in subdivisions (i)-(iii) below:

i. *Workforce Members*

For purposes of this Policy, the term "workforce member" shall include any of the following individuals at Nuvance Health who, on a fulltime, part time or per diem basis, whether functioning remotely, onsite, or any combination thereof, performs, executes, or otherwise carries out Nuvance Health functions, duties, or services:

1. Members of the Nuvance Health Board of Directors, and Members of the Boards of any Nuvance related entity including, without limitation, any Nuvance entity first

- highlighted above in Section III of this policy;¹
2. Chief Executive Officer;²
 3. Corporate Officers;³
 4. Executives and other senior managers regardless of title;⁴
 5. Employees;⁵
 6. Administrators;⁶
 7. Managers;⁷
 8. Affiliates;⁸
 9. Medical Staff Members;⁹
 10. Clinicians;¹⁰
 11. Allied Health Professionals;¹¹
 12. Appointees;¹²
 13. Volunteers;¹³
 14. Personnel;¹⁴
 15. Interns;¹⁵
 15. Students;¹⁶
 16. Trainees; **and**
 17. Any individual whose performance or other conduct is under the direction and control of Nuvance Health, whether or not they are paid by Nuvance Health;

ii. *Business Affiliates:*

For purposes of this Policy, the term "Business Affiliate" shall include any non-workforce member contractor, independent contractor, vendor, subcontractor, consultant, third-party, or person (collectively "Contractors"), who or that, in acting on behalf of Nuvance Health:

- (1) Delivers, furnishes, prescribes, directs, orders, authorizes, administers, or otherwise provides

¹ For purposes of this Policy, "members of the Nuvance Health Board of Directors and Members of the Boards of any Nuvance Health related entity" shall be construed to include members of any associated Board committee.

² 18 NYCRR 521-1.2 [b][1]

³ 18 NYCRR 521-1.2 [b][1]

⁴ New York State Office of the Medicaid Inspector General, Compliance Program Review Guidance, New York State Social Services Law 363-d and Title 18 New York Codes Rules and Regulations Part 521(10/26/16)(hereinafter 2016 OMIG Compliance Program Guidance), p.3

⁵ 18 NYCRR 521-1.2 [b][1]

⁶ 18 NYCRR 521-1.2 [b][1]

⁷ 18 NYCRR 521-1.2 [b][1]; see also, generally, OIG Compliance Program Guidance for Hospitals, 63 Fed. Reg. 8987, 8988, § [I] (1998)

⁸ 2023 OMIG Compliance Program Guidance, p. 18

⁹ See, generally, 2016 OMIG Compliance Program Guidance, p.3; see also OIG Compliance Program Guidance for Hospitals, 63 Fed. Reg. 8987, 8995-8996, § [III][E][I] (1998) and 18 NYCRR 521-1.2 [b][1] (last accessed on 9/3/24)

¹⁰ 18 NYCRR 521-1.2 [b][1]

¹¹ See, generally, OMIG Required Risk Areas at 18 NYCRR §521-1.3(d) (last accessed on 9/3/24)

¹² 2016 OMIG Compliance Program Guidance, p.3 (last accessed on 9/3/24)

¹³ 2016 OMIG Compliance Program Guidance, p.3 (last accessed on 9/3/24)

¹⁴ See, generally, OIG Compliance Program Guidance for Hospitals, 63 Fed. Reg. 8987, 8993, § [III][A][9] (1998) (last accessed on 9/3/24)

¹⁵ 18 NYCRR 521-1.2 [b][1] (last accessed on 9/3/24)

¹⁶ 18 NYCRR 521-1.2 [b][1] (last accessed on 9/3/24)

- (2) Federal healthcare program items, supplies, and services;¹⁷
- (3) Performs coding or billing functions;¹⁸
- (4) Monitors the healthcare provided by Nuvance Health;¹⁹
- (5) Contributes to Nuvance Health's entitlement to payment under Federal healthcare programs or payment from private payors;²⁰
- (6) Is affected by any of the following Nuvance risk areas:²¹
 - (a) Medical record documentation;²²
 - (b) Coding;²³
 - (c) Billings;²⁴
 - (d) Claims preparation and submission;²⁵
 - (e) Claims reimbursement;²⁶
 - (f) Payments;²⁷
 - (g) Patient collections;²⁸
 - (h) Order services;²⁹
 - (i) Medical necessity;³⁰

¹⁷ See CMS, DRA 6032 - Employee Education About False Claims Recovery- Frequently Asked Questions, p.6 (available at: <https://downloads.cms.gov/cmsgov/archived-downloads/SMDL/downloads/smd032207att1.pdf> (last accessed on 8/29/24); See, also, generally Department of Health and Human Services, Office of Inspector General, *OIG Special Advisory Bulletin on the Effect of 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 9/3/24).

¹⁸ See CMS, DRA 6032 - Employee Education About False Claims Recovery - Frequently Asked Questions (available at: https://downloads.cms.gov/cmsgov/archived-downloads/SMDL/downloads/smd032207_att1.pdf)(last accessed on 8/29/24; see also CMS, Center for 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 8/29/24)

¹⁹ See CMS, DRA 6032 - Employee Education About False Claims Recovery - Frequently Asked Questions <https://downloads.cms.gov/cmsgov/archived-downloads/SMDL/downloads/smd032207att1.pdf> (last accessed on 8/29/24; see also CMS, Center for 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 8/29/24)

²⁰ 2016 OMIG Compliance Program Guidance, p.3

²¹ Note, business affiliates affected by "other risk areas that are or should reasonably be identified by Nuvance through its organization experience" are also covered under this policy to the extent that the potential impact of such risk areas when exploited could reasonably lead to, or result in, a potential or actual overpayment. (10 NYCRR 521-1.3 [d][10]). (last accessed on 9/3/24)

²² See 18 NYCRR 521-1.3 [d][10]

²³ 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 8/29/24; see also CMS, Center for 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 8/29/24)

²⁴ See 18 NYCRR 521-1.3 [d][1]

²⁵ See 18 NYCRR 521-1.3 [d][10]

²⁶ See 18 NYCRR 521-1.3 [d][10]

²⁷ See 18 NYCRR 521-1.3 [d][2]

²⁸ See 18 NYCRR 521-1.3 [d][10]

²⁹ See 18 NYCRR 521-1.3 [d][3]

³⁰ See 18 NYCRR 521-1.3 [d][4]

- (j) Quality of care;³¹
 - (k) Governance;³²
 - (l) Mandatory reporting;³³
 - (m) Credentialing;³⁴
 - (n) Contractor oversight;³⁵
 - (o) Identification and returning of overpayments;³⁶
 - (p) Joint ventures;³⁷
 - (q) Improper referrals, incentives, or financial arrangements;³⁸ or
 - (r) Cost reporting³⁹
- (6) Is otherwise affected by this policy due to their:
- (a) duties, functions, role, or responsibilities; or⁴⁰
 - (b) provision of goods or services to Nuvance.

iii. *Agents*: For purposes of this Policy, the term "Agent" shall mean individuals or entities that have entered into an agency relationship with Nuvance Health. Agents may fall under the categories of either Workforce Members or Business Affiliates.

POLICY

Nuvance Health and its' affiliates ("Nuvance") is subject to inquiries and investigation conducted by various government agencies. It is the policy of Nuvance to cooperate fully with any lawful investigation and to respond appropriately to such inquiries and investigations, while protecting its interests by asserting all relevant protections and privileges afforded by law. Accordingly, this policy covers:

1. Telephone calls or letters from a governmental official, representative, or investigator;
2. Presentation of demand letters, subpoenas, or search warrants;
3. On-site visits or inspections to Nuvance facilities;
4. Visits to the homes or other locations of current Covered Individuals, or other contacts, by a government official, representative, investigator, or other individual acting on behalf of the government.

A government investigation may be conducted on a civil and/or criminal basis and may target Nuvance corporate entities and/or Covered Individuals. Nuvance policy with respect to any government investigation is to require that the Chief Compliance, Audit, and Privacy Officer ("CCAPO") and the Office of Legal Services be notified immediately in accordance with policy procedures. Covered Individuals are always free to speak with government investigators or representatives from any federal or state agency, and should be truthful, cooperative, and polite. Once there has been notice of an investigation, the destruction of documents under

³¹ See 18 NYCRR 521-1.3 [d][5]

³² See 18 NYCRR 521-1.3 [d][6]

³³ See 18 NYCRR 521-1.3 [d][7]

³⁴ See 18 NYCRR 521-1.3 [d][8]

³⁵ See 18 NYCRR 521-1.3 [d][9]; see also 42 USC 1396a [a][68][A] (last accessed on 9/3/24)

³⁶ See 18 NYCRR 521-1.3 [d][10]

³⁷ OIG Compliance Program Guidance for Hospitals, 63 Fed. Reg. 8987, 8990, § [II][A][2] (1998) (last accessed on 9/3/24)

³⁸ See 18 NYCRR 521-1.3 [d][10]

³⁹ See 18 NYCRR 521-1.3 [d][10]

⁴⁰ See 18 NYCRR 521-1.3 [d]; see also OIG Compliance Program Guidance for Hospitals, 63 Fed. Reg. 8987,

8989 § [II][A] (last accessed on 9/3/24)

the Record Retention Policy is suspended and no documents may be destroyed until notified otherwise by the Office of Legal Services. In furtherance of the foregoing, Nuvance should comply with the policy procedures.

PROCEDURE

In the event that government officials commence an investigation at Nuvance, the CCAPO and the Legal Services Department & General Counsel should be notified immediately. Initial direction of the Nuvance response to the investigation will be given by the Legal Services Department & General Counsel and may be provided under the attorney-client and work product privileges. Legal Services & General Counsel will immediately notify the appropriate members of senior management of the investigation.

- A. In any criminal investigation Nuvance will inform Covered Individuals that they may, but are not obligated to, speak with government investigators. Nuvance shall not instruct Covered Individuals that they should not speak with investigators. In any criminal investigation, the decision whether or not to speak to government agents or investigators is the Covered Individual's choice. If government investigators request documents in a criminal investigation, however, Covered Individuals should not release documents without consulting with Legal Services & General Counsel. Nuvance will not retaliate against individuals who provide truthful information to any criminal investigators. If a Covered Individual believes he or she has been subject to retaliation, the Covered Individual should refer to the Nuvance Health Whistleblower Protection Policy [COMP 1.2.19] for guidance or call Corporate Compliance.
- B. If a Covered Individual elects to speak with any criminal investigators he or she must tell the truth and should avoid speculation or guesses. Anything a Covered Individual communicates to any criminal investigator may be used against that Covered Individual or Nuvance in a criminal or civil proceeding.
- C. In any purely civil investigation, no Nuvance Covered Individual shall grant any interview with or provide any Nuvance documents to a government investigator or agent without prior approval from Legal Services & General Counsel.
- D. If a Covered Individual engages in a discussion with investigators, he or she may terminate the discussion at any time. Any Covered Individual who elects to speak with any investigators has the right to have an Nuvance representative or attorney present at the time of the discussion. If the Covered Individual desires to exercise this right, he or she should contact Legal Services & General Counsel prior to engaging in any discussion with the investigator.
- E. There are three circumstances under which Nuvance may be investigated: (a) an investigator visits a site without a subpoena or warrant; (b) the investigator presents a subpoena at the time of his or her visit; or (c) the investigator presents a search warrant at the time of his or her visit. Each is dealt with separately below.
 - a. If an investigator visits Nuvance without a subpoena or warrant, he or she has no right to compel a search of the premises, seize documents or files, or engage in discussions with Covered Individuals. In such a situation, the Site Executive should request and review the investigators credentials/ID; take the investigator to a private area and listen to what he or she wishes to discuss or review, and then immediately notify Legal Services & General Counsel. It is important for the Site Executive to pay close attention to all details provided by the investigator, take notes (as appropriate), and ask questions, if necessary, to clarify the focus of the investigation. The Site Executive is not obligated in any way to respond to the investigator's questions and should not, without Legal Services & General Counsel authorization, provide materials at the time of the visit (as such provision may waive privileges Nuvance may wish to assert at a later time). Further, the Site Executive may discontinue the discussion at any time. Upon conclusion of the discussion, the Site Executive should continue to work with Legal Services & General Counsel and the Compliance Office to coordinate a response to the visit.
 - b. If an investigator presents a subpoena at the time of the visit, the Site Executive should accept and review the subpoena. The subpoena may require that Nuvance provide to the government certain specified documents within a stated time period or that any individual appear at a specific date and place to provide testimony. If, after providing the subpoena, the investigator wishes to engage in a discussion with the Site Executive, the Site Executive should follow the guidelines set forth in paragraph (a) above. The Site Executive should immediately

contact Legal Services & General Counsel and fax a copy of the subpoena. Legal Services & General Counsel and the Compliance Office will direct an appropriate response to the subpoena, which may include directing the Site Executive to produce the requested documents within the set timeframe. It is important to note that a subpoena does not authorize the investigator to interview Nuvance Covered Individuals or search the premises at the time the subpoena is delivered. Further, the Site Executive should not produce the requested documents at the time of the visit as certain of such documents may be privileged. If the subpoena demands immediate production of documents, the Site Executive should immediately notify Legal Services & General Counsel

- c. If an investigator presents a search warrant at the time of the visit, the Site Executive should accept and review the warrant. The warrant will require that Nuvance allow the investigator to search the premises for certain specified documents. The Site Executive should immediately contact Legal Services & General Counsel and fax the warrant. If so, instructed by Legal Services & General Counsel, the Site Executive should assist the investigator in locating the specified documents. The Site Executive or a representative from the Compliance Office or Legal Services shall attempt to accompany the investigator and to keep an index of all documents seized by the investigator. If directed by Legal Services & General Counsel, the Site Executive should request that Nuvance be allowed to make copies of any seized documents prior to their removal.
- F. During a government investigation, Covered Individuals must terminate normal document and file destruction/deletion procedures. See Document Retention & Destruction Policy [5.1.6]. Once an investigation has begun, Legal Services & General Counsel will issue a legal hold directing all Covered Individuals not to shred or otherwise destroy or delete any potentially relevant documents, files, or remove any relevant documents or disks from Nuvance offices or elsewhere. The legal hold applies to all copies of documents and Covered Individuals should not shred, destroy, or delete such copies even if an original version of a document exists. For purposes of the legal hold, the term "documents" includes all electronic files including emails, instant messages and saved voicemails. The legal hold applies to all documents or disks used by a Covered Individual in the ordinary course of his or her duties, no matter where those documents exist. For example, potentially relevant documents kept at home, stored on personal e-mail accounts, stored on portable USB drives or stored on third party platforms would all be covered by the legal hold. Any Covered Individual with questions as to applicability of the legal hold should contact Legal Services & General Counsel. While such destruction, deletion, or removal may be in the ordinary course of business, it could be perceived by the government as an obstruction of the investigation and must not occur.
- G. Nuvance must treat all government investigators with courtesy and respect.

Nuvance Covered Individuals must not communicate in any way with the media or outside individuals regarding the investigation as such communication may waive any legal privilege Nuvance maintains with respect to the information disclosed. This policy is not intended to prohibit Covered Individuals from exercising any rights that they may have under state or federal law. All communications with the media and outside parties must be coordinated by Legal Services and the Nuvance Public Relations Department

ENFORCEMENT

All individuals whose responsibilities are affected by this process are expected to be familiar with the basic procedures and responsibilities created by this process. Failure to comply with this process will be subject to appropriate remedial and/or disciplinary action, up to and including termination of any employment or other relationship, in accordance with this process.

REFERENCES

- 5.1.06 Document Retention and Destruction Policy
- Nuvance Health Whistleblower Protection Policy

APPROVAL

Signed by:

Jared B Gaynor

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Signature

12/19/2024

Date