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Owner	Lindy Nesbitt: Assistant VP Compliance & Senior Counsel
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Applicability	Erie County Medical Center
References	CORP-010

Corporate Compliance: Billing and Coding

I. Policy Purpose, Statement of Policy, and Policy Goals:

It is the policy of Erie County Medical Center Corporation ("ECMCC") to maintain the highest principles of professional conduct in its billing and coding practices and to ensure billing and coding compliance with all applicable federal and state laws and regulations. Specifically, ECMCC is committed to compliance with those laws and regulations that address health care fraud, abuse, and the proper billing of Medicare, Medicaid and other government funded health care programs, as well as other payers. By way of example, such laws include, but are not limited to, the Federal and State Laws listed in the reference section below.

All ECMCC employees and agents are required to follow this Policy and Procedure. ECMCC's Corporate Compliance Department shall provide education on the areas of law outlined below, and on ECMCC policies and procedures for detecting and preventing fraud, waste, and abuse.

ECMCC employees and agents have the obligation to report any suspected issues or concerns regarding ECMCC fraud, waste, abuse, billing and or coding under the Federal and State False Claims Act. All ECMCC employees and agents must participate and/or cooperate in good faith with any investigation into a reported violation, be truthful with investigators and preserve documentation and/or records relevant to ongoing investigations.

II. Regulations and Guidance

A. **Applicable Laws and Regulations**

- Federal False Claims Act (31 USC §§3729-3733)
- New York State Laws
    - New York False Claims Act (State Finance Law §§187-194)
    - Social Services Law, Section 145-b-False Statements
    - Social Services Law, Section 145-c-Sanctions
- Criminal Laws
    - Social Services Law, Section 145 – Penalties
    - Social Services Law, Section 366-b- Penalties for Fraudulent Practices
    - Social Services Law, Section 145-c-Sanctions
    - Penal Law Article 175 – False Written Statements
    - Penal Law Article 176 – Insurance Fraud
    - Penal Law Article 177 – Health Care Fraud
- Federal Deficit Reduction Act of 2005 (DRA)- Federal & State Statutes
- Physician Self-Referral Law (Stark Law)
- Anti-Kickback Statute (AKS)
- Patient Protection and Affordable Act (PPACA)

B. **False Claims**

Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a claim, certification or written statement that the person knows or has reason to know (A) is false, fictitious, or fraudulent; (B) includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent; (C) includes or is supported by any written statement that omits a material fact; is false, fictitious, or fraudulent as a result of such omission; and is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact; or (D) is for payment for the provision of property or services which the person has not provided as claimed; shall be subject to, in addition to any other remedy that may be prescribed by law, a civil penalty for each such claim or statement.

C. **Fraud, Waste and Abuse (see also *Fraud, Waste and Abuse Policy* for further details)**

1. **Fraud** - when there is an intentional deception or misrepresentation that an individual knows to be false or does not believe it to be true, and the individual knows that the deception could result in some unauthorized benefit to himself/herself or some other person.
    a. *An example of fraud is knowingly billing for services that were not furnished, including billing Medicare for appointments that a patient failed to keep.*
2. **Waste** - overutilization of services, or other practices that, directly or indirectly, result in unnecessary costs to the Medicare/Medicaid Program. Waste is generally not considered to be caused by criminally negligent actions but rather the misuse of

resources.

a. *An example of waste is needlessly overstocking medications on a unit and being unable to use it all before it expires.*

3. **Abuse** - Actions that may, directly or indirectly, result in unnecessary costs to the Medicare/Medicaid Program. Abuse involves payment for items or services when there is not legal entitlement to that payment and the provider has not knowingly and or/intentionally misrepresented facts to obtain payment.

    a. *An example of abuse is providing and billing for a service that were not medically necessary*.

III. Billing and Coding of Services

ECMCC expects its staff and all personnel to refrain from conduct that may violate fraud and abuse laws. These laws prohibit the submission of false, fraudulent or misleading claims to any governmental entity or third party payor and making any false representations to any person or payor to gain or retain program participation or payment for any service.

At no time are billings to be prepared or submitted, or reimbursement received, for services that have not been performed or are medically unnecessary. Monies to which it has been determined there is no legal entitlement, we may not be legally retained and must be returned within 60 days.

A. **Coding of Services (See also *Health Information Management Legal Hybrid Health Record Policy*)**
Appropriate DRG, ICD-10-CM, CPT and HCPCS codes must clearly reflect the services provided and documented in the medical record. Medical record documentation must substantiate and support the procedure(s)/service(s), medical necessity, and coding submitted. Roundtable coding meetings are held to discuss any coding issues or challenges with the coding staff and CDS team. In addition, an outside coding audit and education is performed on an annual basis.

B. **Billing of Services**

i. ECMCC, its staff members, and its contractors are committed to billing in accordance with the laws, rules, regulations, and policies set forth by the federal and state government.

ii. All staff members are responsible for conducting our business in an honest and ethical manner, and are expected to follow the elements outlined in the ECMCC Code of Conduct.

iii. ECMCC submits claims only for services that are both ordered and performed.

iv. Services or tests that cannot be performed are not submitted for reimbursement. Surgical procedures that are terminated after the patient is prepped and draped, and anesthesia has begun may be able to be billed based on documentation with the application of the appropriate modifier.

v. ECMCC prohibits individuals from knowingly submitting a claim for payment to any federally or state funded program that includes false or fraudulent information, or is based on false or fraudulent documentation.

vi. All employees and agents are responsible for preventing, detecting, and correcting actual or potential fraudulent entries on any bills or claims.

vii. All staff members and contractors are responsible for promptly reporting actual or potential improper payments caused by an improper billing issue, to their supervisor/ manager, and/or the Compliance Department.

IV. Risk Areas

The following is a list of specific risk areas regarding billing and coding compliance:

A. **Medical Necessity for Services.**
ECMCC will submit claims to Medicare or Medicaid (or any other federally-funded health care program or private insurers) only for services that were medically necessary or that otherwise constituted a covered service. Medical necessity will be determined individually for each service or test provided or ordered by the responsible physician or other individual licensed to do so. A medically necessary service or test is defined as one that is reasonable and necessary for the diagnosis or treatment of an illness, injury or to improve the functioning of a malformed body member. The government will only pay for services and tests that are medically necessary and will deny payments for those that are not medically necessary, such as routine physicals, many screening tests or tests conducted for research purposes. Every governmental claim form should be supported by a physician certification that the services were medically necessary for the health of the patient.

B. **Billing for Items or Services Not Actually Rendered**.
Submitting a claim representing that a provider performed a service all or part of which was simply not performed is inappropriate, at a minimum, and possibly illegal. Only those medical services to patients that are consistent with acceptable standards of medical care may be billed. ECMCC will only bill for the actual services rendered, and only when those services were consistent with accepted standards of medical care. The billing for such services must comply with all applicable rules and regulations governing correct documentation, coding and billing.

C. **Correct Coding.**
All federal and state regulations governing billing procedures are to be followed and all personnel responsible for billing will be trained in the appropriate rules governing billing, coding and documentation. If the documentation in the medical record is unclear, then billing personnel must request clarification or additional information from the physician or provider of services. This includes when the appropriate code or diagnosis is unclear. Billing personnel cannot create coding or diagnostic information based upon their own interaction with the patient, from information provided from an earlier date of service, or based on what they might conclude is the probable or most likely diagnosis.

D. **Up coding.**
This reflects the practice of using a billing code that provides a higher payment rate than the billing code that actually reflects the services provided to the patient. No ECMCC personnel shall knowingly engage in any form of up coding. All federal and state regulations governing billing procedures will be followed.

E. **Duplicate Billing.**
This occurs when a provider submits more than one claim for the same service or the bill is submitted to more than one primary payor at the same time. Although duplicate billings can

occur due to simple billing error, systemic or repeated double-billing may be viewed as a false claim, particularly if the overpayment is not properly refunded. It is the ECMCC's policy to never intentionally submit duplicate billings and to correct any inadvertent duplicate billings.

F. **Patient dumping/EMTALA.**
all Medicare participating hospitals with an emergency department must: [1] Provide for an appropriate medical screening examination to determine whether or not an individual requesting such examination has an emergency medical condition; and [2] if the person has such a condition, [a] stabilize that condition; or [b] appropriately transfer the patient to another hospital.

G. **Billing Companies.**
Any billing companies engaged to perform billing and coding services must comply with all billing regulations of Medicare, Medicaid and all third party payors and ECMCC requirements to generate accurate and complete billing documentation. They must have a Business Associate Agreement with the appropriate ECMCC department or entity in compliance with HIPAA regulations.

H. **Cost Reports**
Entities within ECMCC receive reimbursement under government programs requiring the submission of complete and accurate reports of its cost of operation and other information. These laws and regulations define what costs are allowable and outline the appropriate methodologies to claim reimbursement for the cost of services provided to the program beneficiaries. ECMCC cost reports will be prepared in compliance with all applicable state and federal regulations.

I. **Unbundling.**
ECMCC will not fragment its billings in any manner that is inconsistent with federal and state laws. An example of unbundling would be billing separately or "piecemeal" for services such as blood work, EKG, colonoscopy, Pap smear and other ancillary tests were related to the visit and provided to the patient.

V. Auditing and Monitoring Billing/Coding Compliance

The Corporate Compliance Department in coordination with Revenue Integrity will engage in specific billing/coding audits throughout a given year. Compliance will investigate and evaluate reported issues or concerns and determine necessary corrective actions. These audit efforts will help detect and eliminate fraud, waste and abuse. Monthly meeting have been established to discuss issues, challenges and compliance risks with the Revenue Cycle Team (includes Revenue Integrity, HIM, CDS and billing).

A. **Audit Types**
    a. Proactive annual outside coding audits
    b. Random Audits
    c. Reported Billing/Coding concerns
    d. Focused Audits
    e. Overpayment Audits

VI. Education

Billing and documentation compliance is one of ECMCC's most important priorities. All administration, medical staff, clinicians, and billing and coding staff associated with billing and documentation must be knowledgeable about ECMCC's Compliance Plan.

A. The Compliance Office shall:
    i. Coordinate orientation, re-orientation and periodic billing training programs; and
    ii. Document attendance at billing education sessions.

B. Maintaining compliance with billing regulations requires more than the efforts of the Compliance Office. Therefore, it is imperative that PFS, Revenue Integrity, Clinical Research, and Health Information Management billers, coders, auditors, or other pertinent staff members throughout the institution keep up-to-date with changing policies, regulations, coverage determinations, and changes that occur regarding third-party payers, including Medicare.

VII. Obligation to Report

Responsibility and accountability for actual compliance with laws, regulations, and policies rests with each individual employee. ECMCC's Code of Conduct outlines the expectation of behavior regarding compliance, maintaining our commitment to honesty, integrity and excellence. It clearly outlines all employees are expected to report any concerning conduct, violations of applicable law, rules, regulations or the Code. Employees are protected by ECMCC's Whistleblower Policy (see *Non-Retaliation and Non-Intimidation Policies*), summarized as follows:

A. All ECMCC employees can express problems, concerns, and opinions without fear of retaliation, intimidation or reprisal.

B. ECMCC takes necessary steps to refrain from intimidating, threatening, coercing, discriminating against or taking any other retaliatory action against any employee or individual for the exercise of any right under, or for participation in any process established by applicable law, regulation, or existing policies and procedures.

C. New York State Whistleblower Law Section 740 of the Labor Law provides whistleblower rights for employees, former employees and contractors by prohibiting retaliation for disclosing or threatening to disclose any conduct that they reasonably believe violates any law, rule or regulation, executive order, or any judicial or administrative decision, ruling or oder; or that they reasonably believe constitutes a substantial and specific danger to the public health or safety.

VIII. Investigation

All reports of potential violations of laws, regulations, policies or questionable conduct, from any source, shall be logged and presented to the Compliance Office. The Compliance Office will assess, direct and/or conduct the investigation. A report of the investigation, including findings and recommendations, will be created. A summary report of all investigations will be provided to the Audit Committee periodically. Investigations resulting in extensive corrective action and/or disciplinary action shall be reviewed and approved by the Compliance Office prior to implementation.

IX. Disciplinary Action

Disciplinary action may be imposed as a part of a corrective action plan for all ECMCC administration, faculty, house staff, and employees. SEE HR-052.

For agents or contractors, a corrective action plan will be put in place or termination of the contract depending on the circumstances.

X. Sanction/Exclusion

All employees, medical staff, contractors, vendors and others with whom ECMCC does business with are properly screened on a monthly basis for exclusions and are authorized to participate in federal and state healthcare programs. Appearance on a sanction or exclusion list is cause for termination from ECMCC employment.

ECMCC will not employ or engage in a business relationship with anyone who is currently under sanction or exclusion by the Department of Health and Human Services Office of Inspector General (OIG) and any other duly authorized enforcement agency or licensing and disciplining authority. (See *Verification for Excluded /Terminated Employees and Contractors Policy*).

Reference:

Federal False Claims Act (31 U.S.C. §3729 - §3733, New York State False Claims Act (Deficit Reduction Act (DRA) of 2005; §1902(a)(68)(A) and section 6032, 42 USC §1396a(a)(68), Social Services Law §145, 363-d, 366-b; NYS False Claims Act State Finance Law, Art.13, §187-194, New York Labor Law §740 and §741 and New York State Penal Law, Article 175-177.

Non-Retaliation and Non-Intimidation Policy; Verification for Excluded/Terminated Employees and Contractors

Fraud, Waste and Abuse Policy

Health Information Management Legal Hybrid Health Record Policy

ECMCC Code of Conduct

NYS Whistleblower Law Section 740 1/26/2022

ECMCC has developed these policies and procedures in conjunction with administrative and clinical departments. These documents were designed to aid the qualified health care team in making clinical decisions about patient care. These policies and procedures should not be construed as dictating exclusive courses of treatment and/or procedures. No health care team member should view these documents and their bibliographic references as a final authority on patient care. Variations from these policies and procedures may be warranted in actual practice based upon individual patient characteristics and clinical judgment in unique care circumstances.

Approval Signatures

Step Description	Approver	Date
	Sam Cloud: Chief Medical Officer	08/2023
	Lindy Nesbitt: Assistant VP Compliance & Senior Counsel	08/2023
	Lindy Nesbitt: Assistant VP Compliance & Senior Counsel	08/2023