# DAVIESS COMMUNITY HOSPITAL

2018

Health Care Compliance Program

Manual

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**Daviess Community Hospital**

**Compliance Program**
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1. **General Policy**

**Compliance Statement**

It is the Policy of Daviess Community Hospital, Daviess Community Rehab and Behavioral Health, and Helping Hearts Hospice (collectively, the "Hospital") to provide services in compliance with all state and federal laws governing its operations, and consistent with the highest standards of business and professional ethics. This policy is a solemn commitment to our patients, to our community, to those government agencies that regulate the Hospital, and to ourselves. In order to ensure that the Hospital's compliance policies are consistently applied, the Hospital has established a legal and regulatory Compliance Program. The program is directed by a Compliance Committee and a Compliance Officer, who are charged with reviewing our compliance policies and specific compliance situations that may arise.

a Employee, Student, Volunteer, and Physician General Standards of Conduct
All Hospital employees, as well as those professionals who enjoy professional staff membership, must carry out their duties for the Hospital in accordance with this policy. Any violation of applicable health care law, or deviation from appropriate ethical standards, will subject an employee or independent professional to disciplinary action, which may include oral or written warning, disciplinary probation, suspension, reduction in salary, demotion, dismissal from employment, or revocation of privileges. These disciplinary actions also may apply to an employee's supervisor (or a staff member's department chief) who directs or approves the employee's improper actions, or is aware of those actions but does not act appropriately to correct them; or who otherwise fails to exercise appropriate supervision.

This Manual includes statements of the Hospital's policy in a number of specific areas. All employees and professional staff members must comply with these policies, which define the scope of Hospital employment and professional staff membership. Conduct that does not comply with these statements is not authorized by the Hospital, is outside the scope of Hospital employment and professional staff membership, and may subject employees and professional staff members to disciplinary action. If a question arises as to whether any action complies with Hospital policies or applicable law, an employee should present that question to that employee's supervisor, or, if appropriate, directly to the Hospital's Compliance Officer, or to a member of the Compliance Committee. All employees should review this Manual from time to time to make sure that these policies guide their actions on behalf of the Hospital.

b) Retribution Free Reporting

If, at any time, any employee or professional staff member becomes aware of any apparent violation of the Hospital's policies, he or she must report it to his or her supervisor (in the case of an employee), to the Compliance Officer or to the toll free Ethics Line @ **1-800-340-5877**.

Compliance Officer contact information:

- Compliance Officer - Thomas R. Sumner
- Direct Phone Number – 1-812-257-7557
- Email – tsumner@dchosp.org

All persons making such reports are assured that such reports are treated as confidential. The Hospital will take no adverse action against persons making such reports, in good faith, whether or not the report ultimately proves to be well-founded. The only exception would be when the caller is in fact, the perpetrator. If an employee or professional staff member does not report conduct violating the Hospital's policies, that employee or professional staff member may be subject to disciplinary action, up to and including termination of employment or revocation of privileges.

The laws discussed in this Policy Manual are complex and many of the concepts are developed in case-by-case determinations. In addition, this Manual deals only generally with some of the more important legal principles. Their mention is not intended to minimize the importance of other applicable laws, professional standards, or ethical principles, which may be covered in other Hospital policies.

## 2. Payments, Discounts, and Gifts

The Hospital participates in the Medicare program, a federal program which provides health insurance to the aged and disabled, and the Medicaid program, a federal/state program which provides health care coverage to low income persons. Federal law makes it illegal for the Hospital to provide or accept "remuneration" in exchange for referrals of patients covered by Medicare or Medicaid. The law also bars the payment or receipt of such remuneration in return for directly purchasing, leasing, ordering, or recommending the purchase, lease, or ordering of any goods, facilities, services, or items covered under the benefits of Medicare or Medicaid. In Indiana such activities are covered under I.C. 12-15-24.

The "fraud and abuse" or "anti-kickback" laws are designed to prevent fraud in the Medicare and Medicaid programs and abuse of the public funds supporting the programs. The Hospital is committed to carefully observing the anti-kickback rules and avoiding any practice that may be interpreted as abusive. Employees in the finance department, purchasing and facilities departments, laboratory, pharmacy, medical staff administration, and any department entering into personal service contracts are expected to be vigilant in identifying potential anti-kickback violations and bringing them to the attention of the Compliance Officer.

a. Anti-Kickback Laws

The federal and state anti-kickback laws are broadly written to prohibit the Hospital and its representatives from knowingly and willfully offering, paying, asking, or receiving any money or other benefit, directly or indirectly, in return for obtaining or rewarding favorable treatment in connection with the award of a government contract. The anti-kickback laws must be considered whenever something of value is given or received by the Hospital or its representatives or affiliates that are in any way connected to patient services. This is particularly true when the arrangement could result in over-utilization of services or a reduction in patient choice. Even if only one purpose of a payment scheme is to influence referrals, and otherwise it appears to be a legitimate, appropriate business arrangement, the payment may be unlawful.

There are many transactions that may violate the anti-kickback rules. For example, no one acting on behalf of the Hospital may offer gifts, loans, rebates, services, or payment of any kind to a physician who refers patients to the Hospital, or to a patient, without consulting the Compliance Officer and Hospital's Attorney, Hall/Render for review. Rentals of space and equipment must be at fair market value, without regard to the volume or value of referrals that may be received by the Hospital in connection with the space or equipment. Fair market value should be determined through an independent appraisal. Verification of all contract reviews by the hospital's legal counsel will be submitted to the Compliance Officer.

Agreements for professional services, management services, and consulting services must be in writing, have a defined term, and specify the compensation in advance. Payment based on a percentage of revenue should be avoided in many circumstances. Any questions about these agreements should be directed to the Compliance Officer for review with the hospital's legal counsel. Joint ventures with physicians or other health care providers, or investment in other health care entities, must be reviewed by the Attorney. Verification of legal reviews will be submitted to the Compliance Officer/Committee.

The U.S. Department of Health and Human Services has described a number of payment practices that will not be subject to criminal prosecution under the anti-kickback laws. These so-called "safe harbors" are intended to help providers protect against abusive payment practices while permitting legitimate ones. If an arrangement fits within a safe harbor it will not create a risk of criminal penalties and exclusion from the Medicare and Medicare programs. However, the failure to satisfy every element of a safe harbor does not in itself make an arrangement illegal. Analysis of a payment practice under the anti-kickback laws and the safe harbors is complex, and depends upon the specific facts and circumstance of each case. Employees should not make unilateral judgments on the availability of a safe harbor for a payment practice, investment, discount, or other arrangement. These situations must be brought to the attention of the Compliance Officer for review with legal counsel.

Violation of the anti-kickback laws is a felony, punishable by a $25,000 fine or imprisonment for up to five years, or both. Violation of the law could also mean that the Hospital and/or a physician is excluded from participating in the Medicare and Medicaid programs for up to five years.
In addition to the federal criminal penalties, I.C. 12-15-24-2 also applies.

b. Entertainment and Gifts

The Hospital recognizes there will be times when a current or potential business associate may extend an invitation to attend a social event in order to further develop your business relationship. You may accept such invitations, provided: (1) the cost associated with such an event is reasonable and appropriate, which, as a general rule, means the cost will not exceed $100.00 per person; (2) no expense is incurred for any travel costs (other than in a vehicle owned privately or by the host company) or overnight lodging; and (3) such events are infrequent. The limitations of this section do not apply to business meetings at which food (including meals) may be provided. Sometimes a business associate will extend training and educational opportunities that include travel and overnight accommodations to you at no cost to you or the Hospital. Similarly, these are some circumstances where you are invited to an event at a vendor's expense to receive information about new products or services. Prior to accepting any such invitation, you must receive approval to do so consistent with the corporate policy on this subject.

As a Hospital employee, you may accept gifts with a total value of $50.00 or less in any one year from any individual or organization who has a business relationship with the hospital or Company. For purposes of this paragraph, physicians practicing in the Hospital or its' facilities are considered to have such a relationship. Perishable or consumable gifts given to a department or group are not subject to any specific limitation. You may accept gift certificates, but you may never accept cash or financial instruments (checks, stocks). Finally, under no circumstances may you solicit a gift. This section does not limit the hospital facilities from accepting gifts, provided they are used and accounted for appropriately.

With regard to the $100.00 guideline, if circumstance arise where an entertainment event was contemplated prior to the event to meet the guideline but unforeseeably exceeded it, a report to that effect with the relevant details must be filed consistent with the Hospital policy on this subject. If you anticipate an event will exceed the $100.00 guideline, you must obtain advance approval as required by Hospital policy. That policy requires establishing the business necessity and appropriateness of the proposed entertainment. The organization will under no circumstances sanction participation in any business entertainment the might be considered lavish. Departures from the $100.00 guideline are highly discouraged.

Also, the Hospital or its' facilities may routinely sponsor events with a legitimate business purpose (hospital board meetings or retreats). Provided that such events are for business purposes, reasonable and appropriate meals and entertainment may be offered. In addition, transportation and lodging can be paid for. However, all elements of such events, including these courtesy elements, must be consistent with the corporate policy on such events. Whenever an employee is not sure whether a gift is prohibited by this policy, the gift must be reported to the Compliance officer upon its receipt.

3. **Billing and Claims**

When claiming payment for Hospital or professional services, the Hospital has an obligation to its patients, third party payors, and the state and federal governments to exercise diligence, care, and integrity. The right to bill the Medicare and Medicaid programs, conferred through the award of a provider or supplier number, carries a responsibility that may not be abused. The Hospital is committed to maintaining the accuracy of every claim it processes and submits. Many people, throughout the Hospital, have responsibility for entering charges and procedure codes. Each of these individuals is expected to monitor compliance with applicable billing rules. Any false, inaccurate, or questionable claims should be reported to a supervisor or to the Compliance Officer.

False billing is a serious offense. Medicare and Medicaid rules prohibit knowingly and willfully making or causing to be made any false statement or representation of a material fact in an application for benefits or payment. It should be noted that merely "reckless" billing can expose the hospital to extremely high penalties. It is not necessary to prove that anyone at the Hospital specifically intended to defraud Medicare for such penalties to be imposed. It is also unlawful to conceal or fail to disclose the occurrence of an event affecting the right to payment with the intent to secure payment that is not due. Examples of false claims include:

- Billing separately for outpatient services within 72 hours prior to an inpatient admission
- Using the wrong discharge/transfer code on discharged patients
- Claiming reimbursement for services that have not been rendered
- Filing duplicate claims
- "Upcoding" to more complex procedures than were actually performed
- Including inappropriate or inaccurate costs on Hospital cost reports
- Falsely indicating that a particular health care professional attended a procedure or that services were otherwise rendered in a manner they were not
- Billing for a length of stay beyond what is medically necessary
- Billing for services for items that are not medically necessary
- Failing to provide medically necessary services or items
- Billing excessive charges.
- "Unbundling" or splitting a code for consolidated services into individual component codes to maximize reimbursement

Hospital employees and agents who prepare or submit claims should be alert for these

and other errors. It is important to remember that outside consultants only advise the Hospital. The final decision on billing questions rests with the Hospital.

In compliance with federal law, the Hospital does not permit reimbursement for any Medicaid service at a rate higher than that approved by the state or accepting any payment as a precondition of admitting a Medicaid patient to the Hospital.

The Hospital carefully follows the Medicare rules on assignment and reassignment of billing rights. If there is any question whether the Hospital may bill for a particular service, either on behalf of a physician or on its own behalf, the question should be directed to the Compliance Officer for review. Hospital employees should not submit claims for other entities or claims prepared by other entities, including outside consultants, without approval from the Compliance Officer. Special care should be taken in reviewing these claims, and Hospital personnel should request documentation from outside entities if necessary to verify the accuracy of the claims.

There are other civil and criminal laws regarding the filing of a false claim with the federal government.

Under the Civil False Claims Act a person is liable if they knowingly submit or cause to be submitted a false claim to the federal government, use a false record or statement to obtain payment on a false claim or conspire to defraud the federal government by getting a claim allowed or paid. The term "knowingly" has been defined as, actual knowledge, deliberate ignorance or reckless disregard of the truth or falsity of the claim.

The damages under the Civil False Claims Act are straightforward and severe. The Civil False Claims Act punishes each transgression with a fine of no less than $5,000 and no more than $10,000 for each "false or fraudulent" claim submitted to the government for payment plus treble.

Another aspect of the Civil False Claims Act is its qui tam provision which empowers individuals ("relators") commonly referred to as whistleblowers, to institute a false claims case by filing a civil complaint in the name of the government. These whistleblower cases, if based on solid information and credible witnesses, are the easiest method available for the government to identify potential fraud and abuse violations. In order to encourage individuals to report potential fraud and abuse claims, the government shares any financial recovery with the whistleblower. However, there are provisions in the False Claims Act that allow an organization to bring suit against a whistleblower for frivolous actions.

Medicare and Medicaid Patient and Program Protection Act
(Criminal False Claims Relating to Medicare/Medicaid)

In order to establish a criminal violation of the Medicare and Medicaid Patient and Program Protection Act, the government must prove that the defendant knowingly and willfully made false statements or fraudulently concealed information about Medicare and/or Medicaid payments. This statue also imposes criminal penalties on anyone who applies for Medicare or Medicaid.

Criminal False Claims Act

The element necessary to convict a person under the criminal provisions of the False Claims Act are that the person submitted a claim that they knew to be false, fictitious or fraudulent to an agent of the United States Government. A defendant may be convicted of submitting a false claim even if the defendant himself did not submit the false claim, but rather authorized a subordinate to sign and send in the claim. If convicted under the False Claims Act, a defendant is subject to a fine or imprisonment or both.

It is illegal to make any false statement to the federal government, including statements on Medicare or Medicaid claim forms. It is illegal to use the U.S. mail in a scheme to defraud the government. Any agreement between two or more people to submit false claims may be prosecuted as a conspiracy to defraud the government.

The Hospital promotes full compliance with each of the relevant laws by maintaining a strict policy of ethics, integrity, and accuracy in all its financial dealings. Each employee and professional, including outside consultants, who is involved in submitting charges, preparing claims, billing, and documenting services is expected to maintain the highest standards of personal, professional, and institutional responsibility.

4. **Patient Referrals**

Patient referrals are important to the delivery of appropriate health care services. Patients are admitted, or referred, to the Hospital by their physicians. Patients leaving the Hospital may be referred to other facilities, such as skilled nursing or rehabilitation facilities. Patients may also need durable medical equipment, home care, pharmaceuticals, oxygen, and may be referred to qualified suppliers of these items and services. The Hospital's policy is that patients, or their legal representatives, are free to select their health care providers and suppliers subject to the requirements of their health insurance plans. The choice of a hospital, a diagnostic facility, or a supplier should be made by the patient, with guidance from his or her physician as to which providers are qualified and medically appropriate. Physicians and other health care providers may have financial relationships with the Hospital or its affiliates. These relationships may include compensation for administrative or management services, income guarantees, loans of certain types, or free or subsidized administrative services. In some cases, a physician may have invested as a part owner in a piece of diagnostic equipment or a health care facility.

A federal law known as the "Stark law" applies to any physician who has, or whose immediate family member has, a "financial relationship" with an entity such as the Hospital, and prohibits referrals by that physician to the Hospital for the provision of certain designated health services reimbursed by Medicare and Medicaid. If a financial relationship exists, referrals are prohibited unless a specific exception is met. The Hospital requires that each financial relationship with a referring physician or his or her family member fit within one of the exceptions to the Stark law. Although responsibility for evaluating financial relationships with physicians lies with the Hospital Attorney, the chief of each department, the medical staff, administration, and the payroll department are expected to monitor financial relationships and report any irregularities to the Compliance Officer. Verification of all legal opinions received by the hospital for evaluating financial relationships with physicians will be forwarded to the Compliance Officer and Committee.

Employees should not, however, make unilateral judgments on the availability of a Stark exception and must always bring such issues to the attention of the Compliance Officer for review with legal counsel.

The Stark law applies to the following types of services:

- Clinical laboratory
- Physical therapy
- Occupational therapy
- Radiology (including MRI, CT, ultrasound, and mammography)
- Durable medical equipment, parenteral and enteral nutrients
- Equipment and supplies
- Prosthetics and orthotics
- Hospice services
- Outpatient prescription drugs
- Inpatient and outpatient hospital services
- Radiation therapy services and supplies.

The exceptions under the Stark law are complex, and several general rules must be followed. Both leases for physician office space and personal services contracts with physicians must be in writing, and signed by the parties. Any premises leased must be specified and must not exceed the space reasonably needed for the physician's legitimate purposes. Rental charges must be set in advance, at fair market value without regard to the volume or value of referrals by the physician. A lease must be commercially reasonable even if no referrals were made between the parties. Similarly, a personal service contract must specify the services to be provided by the physician to the Hospital, which must be reasonable and necessary for legitimate purposes, and must be for at least one year. Compensation paid to physicians must also be set in advance at fair market value, be unrelated to the volume or value of referrals, and be commercially reasonable. Contract services may not involve the counseling or promotion of an illegal business arrangement. Physician incentive plans, which may include volume-based compensation,

will be acceptable if certain requirements are met.

Physicians purchasing clinical laboratory services or other items or services from the Hospital must pay fair market value. An arrangement whereby the Hospital bills for a group practice may be acceptable if it was in place prior to December 19, 1989 and meets certain other requirements.

Penalties for violating the Stark law include (i) no Medicare or Medicaid payment for the service referred illegally; (ii) a refund to the beneficiary of any amounts collected; (iii) fines of up to $15,000 levied on both the physician and the entity for each service referred illegally, plus additional fines based on the amounts billed; (iv) civil monetary penalties of up to $100,000 plus other assessments; and (v) exclusion from the Medicare or Medicaid programs.

5. **Physician Recruitment**

The recruitment and retention of physicians require special care to comply with Hospital policy and applicable law. Physician recruitment has implications under the anti-kickback laws, the Stark law, and the IRS rules governing the Hospital's tax-exempt status. Each recruitment package or commitment should be in writing, consistent with guidelines established with the Hospital. New or unique recruitment arrangements must be reviewed by the Hospital Attorney, with verification of review forwarded to the Compliance Officer. In general, support provided to a new physician is most likely to be acceptable if it is provided in order to persuade the physician to relocate to the Hospital's geographic service area in order to become a member of the professional staff, or if it is provided to a new physician completing his or her training. Support should be of limited duration. The physician cannot be required to refer patients to the Hospital, and the amount of compensation or support cannot be related to the volume or value of referrals. Income guarantees present special issues and should be reviewed by the Hospital Attorney with verification of review to the Compliance Officer on a case-by-case basis.

Employees should not make unilateral decisions regarding the appropriateness of a physician recruitment arrangement. Any such arrangement should be brought to the attention of the Compliance Officer for review with legal counsel.

6. **Physician Practice Acquisition**

To improve the delivery of health care services, the Hospital may, from time to time, acquire physician practices. These acquisitions require special care to comply with applicable law because they have implications under the anti-kickback laws, the Stark law, and the IRS rules governing the Hospital's tax-exempt status.

a. Anti-Kickback Laws

As discussed above, federal law makes it illegal for the Hospital to provide or accept "remuneration" in exchange for referrals of patients covered by Medicare or Medicaid. Acquisitions of physician practices may implicate the anti-kickback laws because they may constitute illegal payments to induce the referral of Medicare or Medicaid patients.

Generally, acquisitions will comply with federal law when the amounts paid by the Hospital reflect the fair market value of the acquired practice. Fair market value should be determined through an independent appraisal. Payments in excess of fair market value may violate the anti-kickback laws, particularly when there is an ongoing relationship between the Hospital and the acquired practice. Several specific types of payment are subject to scrutiny:

- Payment for good will
- Payment for value of ongoing business unit
- Payment for covenants not to compete
- Payment for exclusive dealing agreements
- Payment for patient lists
- Payment for patient records.

The "safe harbor" protections discussed above may also apply to a particular acquisition. Employees should not, however, make unilateral judgments on the availability of a safe harbor. These situations must be brought to the attention of the Compliance Officer for review with legal counsel. Any questions should be directed to the Compliance Officer, and any proposed acquisition of a physician practice must be reviewed by the Hospital Attorney, with verification then forwarded to the Compliance Officer and Committee for review.

Violation of the anti-kickback laws is a felony, punishable by a $25,000 fine or imprisonment for up to five years, or both. Violation of the law could also mean that the Hospital and/or physicians are excluded from participating in the Medicare and Medicaid programs for up to five years. In addition to the federal criminal penalties, I.C. 12-15-24-2 also applies.

b Stark Law

Physician practice acquisitions also implicate the Stark law discussed earlier. Because the law is particularly complex, all transactions must be reviewed by the Compliance Officer and legal counsel to ensure compliance.

c. IRS Scrutiny

The IRS retains authority to audit the activities of tax-exempt organizations. In particular, the IRS may revoke the Hospital's tax-exempt status if payments for the acquisition of group practices are deemed "excessive." While current, independent appraisals are important, equally important are the rationale and support for the reasonableness of the assumptions on which the valuation is based. Any questions should be directed to the Compliance Officer for review with legal counsel.

7. **Patient Transfers**

Operation of the emergency department is an integral part of the Hospital's service to the community under its charitable mission. The emergency department is known as a place where any sick or injured person may come for care regardless of his or her ability to pay. The federal government has enacted an "anti-dumping" law to ensure that patients are not transferred from a hospital emergency room to another facility unless it is medically appropriate.

Prompt and effective delivery of emergency care may not be delayed in order to determine a patient's insurance or financial status. Each patient who presents at the emergency department must receive an appropriate medical screening examination. Patients with emergency medical conditions, and patients in active labor, must be cared for in the Hospital's emergency department until their condition has stabilized. An emergency may include psychiatric disturbances, symptoms of substance abuse, or contractions experienced by pregnant women.

If necessary, the stabilized patient may be transferred to another hospital that is qualified to care for the patient, has space available, and has agreed to accept the transfer. Before transfer, Hospital staff shall provide the medical treatment which minimizes the risks to the patient's health and, in the case of a woman in labor, the health of the unborn child. A physician must sign a certification that the medical benefits reasonably expected from treatment at another medical facility outweigh the increased risks to the patient (and, if appropriate, the unborn child). No physician will be penalized for refusing to authorize the transfer of an individual with an emergency condition that has not been stabilized. The transfer must be performed by qualified personnel and transportation equipment, including life support measures during transfer if medically appropriate. A copy of the patient's record, including complete records of the emergency department encounter and any other records that are available, must be sent to the receiving hospital.

The "anti-dumping" law carries reporting obligations. Any employee who believes that an emergency patient has been transferred improperly must report the incident to the Compliance Officer. No employee will be penalized for reporting a suspected violation of the patient transfer law. If an employee or professional staff member believes that an emergency patient has been transferred to the Hospital improperly, the suspected violation must be reported to the Compliance Officer who will contact proper authorities within 72 hours of its occurrence. The name and address of any on-call physician who

refuses or fails to appear within a reasonable time to provide necessary stabilizing treatment of an emergency medical condition or active labor is to be reported immediately to the Compliance Officer.

In addition to the Hospital's medical records, the emergency department will maintain an on-call duty roster and a log documenting each individual who comes to the emergency department seeking assistance. The log must document whether the patient refused treatment or was refused treatment, transferred, was admitted and treated, stabilized and transferred, or discharged. When a patient or a patient's legal representative requests a transfer or refuses a transfer, the informed consent or refusal must be documented in writing. If there are questions about the records required under the patient transfer law, the Compliance Officer will answer them or refer them to counsel.

The federal "anti-dumping" law is enforced through civil monetary penalties and through damages in private civil actions. If a hospital violates the statute, it can be fined up to $50,000 for each violation. A physician, including an on-call physician, who is responsible for the examination, treatment, or transfer of an emergency patient and who negligently violates the law may be fined up to $50,000 for each violation. If the violation is gross and flagrant or repeated, the physician may be excluded from participation in the Medicare and Medicaid programs. The relevant Federal Statute for this issue is 42 U.S.C.§ 1395 dd.

8. **Market Competition**

The Hospital is committed to complying with all state and federal antitrust laws. The purpose of the antitrust laws is to preserve the competitive free enterprise system. The antitrust laws in the United States are founded on the belief that the public interest is best served by vigorous competition, free from collusive agreements among competitors on price or service terms. The antitrust laws help preserve the country's economic, political, and social institutions; they apply fully to health care services provided by hospitals and physicians, and the Hospital is firmly committed to the philosophy underlying those laws.

While the antitrust laws clearly prohibit most agreements to fix prices, divide markets, and boycott competitors-- which are addressed below-- they also proscribe conduct that is found to restrain competition unreasonably. This can include, depending on the facts and circumstances involved, certain attempts to tie or bundle services together, certain exclusionary activities, and certain agreements that have the effect of harming a competitor or unlawfully raising prices. Any questions that might arise should be addressed to the Compliance Officer.

a. Discussion With Competitors

Hospital policy requires that the rates it charges for Hospital care and related items and services, and the terms of its third party payor contracts, must be determined solely by the Hospital. In independently determining prices and terms, we may take into account all relevant factors, including costs, market conditions, widely used reimbursement schedules, and prevailing competitive prices, to the extent these can be determined in the marketplace. There can be, however, no oral or written understanding with any competitor concerning prices, pricing policies, pricing formulas, bids, or bid formulas, or concerning discounts, credit arrangements, or related terms of sale or service. To avoid the possibility of misunderstanding or misinterpretation, Hospital policy prohibits any consultation or discussion with competitors relating to prices or terms which the Hospital or any competitor charges or intends to charge. Joint ventures and affiliations that may require pricing discussions must be individually reviewed for antitrust compliance. Discussions with competitors concerning rationalization of markets, down-sizing, or elimination of duplication ordinarily implicate market division and must be avoided

Hospitals are often asked to share information concerning employee compensation. Hospital policy prohibits the sharing with competing hospitals of current information or future plans regarding individual salaries or salary levels. The Hospital may participate in and receive the results of general surveys, but these must conform to the guidelines for participation in surveys provided under Trade Associations below.

Similarly, Hospital policy prohibits consultation or discussion with competitors with respect to its services, selection of markets, territories, bids, or customers. Any agreement or understanding with a competitor to divide markets is prohibited. This includes an agreement allocating shares of a market among competitors, dividing territories, or dividing product lines or customers.

b. Trade Associations

The Hospital and its health care providers are involved in a number of trade and professional associations. These organizations promote quality patient care by allowing the Hospital and providers to learn new skills, develop policies and, where appropriate, speak with one voice on public issues. However, it is not always appropriate to share business information with trade associations and their members. Sharing information is appropriate if it is used to better inform consumers or to promote efficiency and competition.

The Hospital may participate in surveys of price, cost, and wage information if the survey is conducted by a third party and involves at least five comparably sized hospitals. Any price, cost, or wage information released by the Hospital must be at least three months old. If an employee is asked to provide a trade association with

information about the Hospital's charges, costs, salaries, or other business matters, he or she should consult the Compliance Officer. Joint purchasing through a trade association is probably acceptable, but any joint purchasing plan should be reviewed in advance by the Compliance Officer. If an employee or professional staff member has any question or concern about an activity of a trade association, he or she may ask the Compliance Officer to seek guidance from counsel.

c. Boycotts

Hospital policy prohibits any agreement with competitors to boycott or refuse to deal with a particular person or persons, such as a vendor, payor, or other provider. These agreements need not be written to be illegal; any understanding reached with a competitor (directly or indirectly) on such matters is prohibited. All negotiations by Hospital agents and employees must be conducted in good faith. Exclusive arrangements with payors, vendors, and providers must be approved by a Hospital officer or by the Compliance officer based on an analysis of the relevant market.

d. Physician Services

Hospital credentialing and peer review activities also may carry antitrust implications. Because of the special training and experience of physicians, their skills may best be evaluated by other physicians. It is appropriate for physicians to review the work of their peers. Because the physicians reviewing a particular physician may, by virtue of their medical specialties, be the physician's competitors, special care must be taken to ensure that free and open competition is maintained. As a result, credentialing, peer review and physician discipline at the Hospital are conducted only through properly constituted committees. Physicians participating in these activities are expected to use objective medical judgment.

If any Hospital employee is involved in negotiating a contract of employment or a personal services contract with a physician or other health care provider, it is important to review with care any non-competition provisions incorporated in the agreement. The appropriate geographic scope and duration of a non-competition agreement may vary from case to case. Questions about the appropriateness of a non-competition provision should be directed to the Compliance Officer for review with legal counsel.

e. Penalties

Penalties for antitrust violations are substantial. Individuals and corporations can be fined $350,000 and $10,000,000 respectively, for each antitrust violation, and individuals can be sentenced for up to three years in prison for each offense. In addition, actions giving rise to antitrust violations may violate other federal criminal statutes, such as mail fraud or wire fraud, under which substantial fines and even longer prison sentences can be imposed.

Antitrust violations also create civil liability. Private individuals or companies may bring actions to enjoin antitrust violations and to recover damages for injuries caused by violations. If successful, private claimants are entitled to receive three times the amount of damages suffered, plus attorneys' fees. Moreover, if the antitrust violation was a conspiracy, each member of that conspiracy may be liable for the entire damage caused by the conspiracy.

f. Unfair or Deceptive Practices

In addition to the antitrust laws, the Hospital is committed to complying with other federal and state laws governing market competition. Federal law, particularly the Federal Trade Commission Act, prohibit the use of "unfair or deceptive acts and practices," including the distribution of labeling, advertising, and marketing materials that are false or misleading. Hospital employees responsible for preparing and distributing such materials must be familiar with these laws. Questions about specific materials should be directed to the Compliance Officer before distribution.

Sanctions under this law usually take the form of "cease and desist" orders and may include civil penalties. In addition to federal law, Indiana State laws are found in I.C. 24-1-1 through I.C. 24-1-2.

9. **Tax-Exempt Organizations**

As a non-profit governmental hospital, the Hospital holds federal tax-exempt status. That is, the Hospital is exempt from paying federal income tax on most of its revenue. The Hospital also may accept tax-deductible charitable contributions from members of the community. Loss of exempt status would result in penalties, interest, and significant cost.

In order to qualify for tax exemption, the Hospital must be operated exclusively for charitable purposes. The Hospital must provide a community benefit, such as the promotion of health and the operation of an emergency department open to all. None of its earnings may inure to the benefit of any private individual. Any such "private inurement" could cause the Hospital to lose its tax-exempt status. A private person may not receive more than an incidental benefit from Hospital assets, measured against the overall community benefit provided by the Hospital.

Because the Hospital is dedicated to its charitable purposes, all contracts and agreements must be negotiated at arms length. Compensation provided to health professionals for recruitment, retention, employment, and personal services must be reasonable in the context of the services provided and the need for them. Reasonableness must be analyzed based on overall compensation and benefits. Areas of particular concern are below-market rents, compensation tied to Hospital or department revenues, income guarantees (especially where there is no obligation to repay), below-market loans, and loan guarantees. Any compensation arrangement involving one of these benefits must be reported to the Compliance Officer. If an employee is aware of payments by the Hospital to a private individual or organization that may be unrelated to the Hospital's mission or

in excess of fair market value, these circumstances should be disclosed to the employee's supervisor or to the Compliance Officer.

Any income derived from activities unrelated to the Hospital's charitable purposes shall be reported, and appropriate tax paid. Failure to report accurate compensation information may constitute fraud and could result in criminal prosecution as well as loss of exempt status for the Hospital.

**10. Waste Disposal**

A hospital produces waste of various types. The Hospital is committed to safe and responsible disposal of biomedical waste and other waste products. Compliance with applicable federal and state environmental regulations requires ongoing monitoring and care. The Hospital uses a medical waste tracking system, biohazard labels, and biohazard containers for the disposal of infectious or physically dangerous medical or biological waste. Failure to follow the system could result in significant penalties to the Hospital. Employees who come into contact with biological waste should be familiar with the Hospital's medical waste policy and procedures, and should report any deviations from the policy to their supervisor or the Compliance Officer.

The Hospital complies with the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, and other federal and state laws and regulations governing the incineration, treatment, storage, disposal, and discharge of Hospital waste. If an employee suspects noncompliance or violation of any of these requirements, the circumstances should be reported to a supervisor or to the Compliance Officer. Spills and releases of hazardous materials must be reported immediately, so that necessary reports can be made and cleanup can be initiated.

The Hospital supports ongoing legal and technical review to identify and correct environmental problems. The Hospital will initiate environmental assessments and compliance audits as appropriate. Failure to prevent, report, or correct environmental problems can result in criminal and civil penalties as high as $50,000 per day per violation, imprisonment for up to two years, or both. Even merely negligent violations can result in imprisonment and substantial fines if they pose a serious threat to human health.

11. **Controlled Substances**

The Hospital, through its pharmacy, is registered to compound and dispense narcotics and other controlled substances. Improper use of these substances is illegal and extremely dangerous.

The Hospital requires that its employees comply with the terms of the Hospital's controlled substances registration and with federal and state laws regulating controlled substances. Under Hospital policy, access to controlled substances is limited to persons who are properly licensed and who have express authority to handle them. No health care

practitioner may dispense controlled substances except in conformity with state and federal laws and the terms of the practitioner's license. Employees should carefully follow recordkeeping procedures established by their departments and the pharmacy. Unauthorized manufacture, distribution, use, or possession of controlled substances by Hospital employees is strictly prohibited, and will be prosecuted to the full extent of the law. Any employee who knows of unauthorized handling of controlled substances is to provide the information immediately to his or her supervisor or the Compliance Officer.

Under state law, I.C. 35-48-4-4.5 and I.C. 35-48-4-7 identify the penalties applicable to offenses relating to controlled substances. Federal law may impose sentences of up to twenty years in prison and fines of up to $1,000,000. If the Hospital or its employee is convicted under federal or state law of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance, the Hospital can be excluded from the Medicare and Medicaid programs.

12. **Confidentiality and Privacy (HIPAA)**

Hospital employees and health care professionals possess sensitive, privileged information about patients and their care. Patients properly expect that this information will be kept confidential. The Hospital takes very seriously any violation of a patient's confidentiality. Discussing a patient's medical condition, or providing any information about patients to anyone other than Hospital personnel who need the information and other authorized persons, will have serious consequences for an employee. Employees should not discuss patients with individuals outside the Hospital or with the employee's own family.

The Hospital is the owner of the medical record which documents a patient's condition and the services received by the patient at the Hospital. Medical records are strictly confidential, which means that they may not be released except with the consent of the patient or in other limited circumstances. Special protections apply to mental health records, records of drug and alcohol abuse treatment, and records relating to HIV infection. Medical records should not be physically removed from the Hospital campus, altered, or destroyed. Employees who have access to medical records must take pains to preserve their confidentiality and integrity, and no employee is permitted access to the medical record of any patient without a legitimate, Hospital-related reason for so doing. Any unauthorized release of or access to medical records should be reported to a supervisor.

In keeping up with applicable laws and regulations, Daviess Community Hospital prohibits unauthorized access to its computer system, as well as all patients' personal health information. All records are maintained, stored or destroyed according to the policies of the Health Information Department.

Hospital Portability and Accountability Act (HIPAA) was passed into law (Public Law 104-191) on August 21, 1996. Administrative simplification provisions within this law call for adoption of standards for the electronic transmission of financial and administrative transactions, privacy and security.

HIPAA requires DCH to provide policies and procedures that direct employee, professional staff members, students and volunteers in the ways that will protect patient confidentiality and security of protected health information (PHI).

The legislation specifically calls for civil and criminal penalties when a person knowingly and in violation of the law wrongfully discloses individually identifiable health information. Penalties identified in the law are escalating in accordance with the intent of disclosure:

- If a person knowingly uses or causes to be used a unique health identifier, obtains individually identifiable health information relating to an individual, or discloses individually identifiable health information to another person, the person may be fined up to $50,000, imprisoned not more than one year, or both.
- If the offense is committed under false pretenses, the person may be fined up to $100,000, imprisoned not more than five years, or both.
- If the offense is committed with intent to sell, transfer, or use individually identifiable health information for commercial advantage, personal gain, or malicious harm, the person may be fined up to $250,000, imprisoned not more than 10 years, or both.
- Penalties for non-compliance with the regulations are described in the legislation. The law provides for penalties of $100 for each violation, except that the total amount imposed on the person for all violations of an identical requirement or prohibition during a calendar year may not exceed $25,000.

The final privacy rule identifies the Office of Civil Rights as an enforcement agency for violations of the privacy rule. The Hospital promotes full compliance with each of the relevant laws by maintaining a strict policy of ethics, integrity and accuracy in all its informational dealings. Each employee and professional staff member, student and volunteer, including outside consultants, who deal with health information in any form is expected to maintain the highest standards of personal, professional and institutional responsibility.

The final privacy rules specifies that complaints must be documented and may be sent in hard copy (paper) or electronically. The complaint must identify the entity of the complaint and describe the acts or omissions. DCH encourages its employees and staff helps maintain privacy and may report potential violations via the Healthcare Hotline, 1-800-340-5877 with complete anonymity. Complaints may also be voiced or written to a supervisor or the Compliance Officer using a Complaint Form. The hospital does not punish employees for reporting violations and expects to learn from experience as each event is reviewed.
The privacy rule includes the statement that the Secretary of HHS may conduct

compliance reviews to determine whether covered entities are complying with the rule. It specifies that a covered entity must keep such records and submit such compliance reports, in such time and manner and containing such information, as the Secretary may determine to be necessary to enable the Secretary to ascertain whether the covered entity has complied or is complying with the applicable requirements. Access to facilities, books, records, accounts and other sources of information, including protected health information, that are pertinent to ascertaining compliance.

Policies and Procedures may be changed but must not be put into practice until the effective date. The Privacy Rule specifies that a covered entity must retain the required documentation for six years from the date of its creation or the date when it last was in effect.

13. **Discrimination**

The Hospital and its affiliates are committed to a policy of nondiscrimination and equal opportunity for all qualified applicants and employees, without regard to race, color, sex, religion, age, national origin, ancestry, disability, or sexual orientation. Our policy of non-discrimination extends to the care of patients. Discrimination may also violate state and/or federal anti-discrimination laws and trigger substantial civil penalties.

If an employee feels he or she or any patient has been discriminated against or harassed on the basis of his or her race, color, sex, or other protected category, he or she should contact the Compliance Officer or the Director of Human Resources so that an investigation may be initiated in accordance with Hospital policies and procedures. A patient who feels he or she has been the subject of unlawful discrimination or harassment is encouraged to contact any supervisor who will refer the matter to the appropriate Hospital personnel for investigation.

The Hospital is also strongly committed to complying with other federal and state laws governing employment. These laws include:

- The Americans with Disabilities Act
- The Employee Retirement Income Security Act
- The Occupational Safety and Health Act
- The Labor Management Relations Act
- The Age Discrimination in Employment Act
- The Fair Labor Standards Act
- The Immigration Reform and Control Act

The Compliance Officer and the personnel in human resources can provide employees with information on these laws and can direct questions to the proper person.

14. **Political Contributions**

The Hospital believes that our democratic form of government benefits from citizens who are politically active. For this reason, the Hospital encourages each of its employees to participate in civic and political activities in his or her own way.

The Hospital's direct political activities are, however, limited by law. Corporations may not make any contributions -- whether direct or indirect -- to candidates for federal office. Thus, the Hospital may not contribute any money, or lend the use of vehicles, equipment, or facilities, to candidates for federal office. Nor may the Hospital make contributions to political action committees that make contributions to candidates for federal office. The Hospital may not require any employees or professional staff members to make any such contribution. Finally, the Hospital cannot reimburse its employees or professional staff members for any money they contribute to federal candidates or campaigns.

Violation of federal election laws carries potential criminal penalties of up to one year in jail and a fine of $25,000 or three times the amount of the illegal contribution, whichever is greater. Civil penalties also may be assessed.

State law also limits the extent to which corporations may contribute to political candidates. This is done under I.C. 3-9-2-4 and I.C. 3-9-2-5.

Consistent with its charitable purpose, the Hospital does not carry on "propaganda" or attempt to "influence legislation," as these acts are defined under the Internal Revenue Code. The Hospital and its representatives may not participate in or intervene in any political campaign for or against any candidate.

15. **Purchasing**

Purchasing decisions must be made in accordance with applicable Hospital policy. In addition, the prohibitions discussed in Section 2 of this Manual entitled "Payments, Discounts, and Gifts," apply to purchasing decisions made on behalf of the Hospital. Purchasing decisions must in all instances be made free from any conflicts of interest that could affect the outcome. See Section 17. The Hospital is committed to a fair and objective procurement system which results in the acquisition of quality goods and services for the Hospital at a fair price.

16. **Fund-Raising**

In furtherance of its charitable purposes, the Hospital conducts fund-raising activities through the Daviess Community Hospital Foundation. The Hospital complies with Indiana registration, record-keeping, and reporting requirements with respect to its fund-raising activities. Hospital policy requires that all solicitation of charitable contributions for the Hospital or its affiliates must be done under the supervision of the Daviess Community Hospital Foundation. The Hospital does not authorize any employee or other individual to use the Hospital's name in any fund-raising activities not approved or supervised by the Daviess Community Hospital Foundation.

It is illegal for any employee or representative of the Hospital to make any false, deceptive, or misleading statement in connection with a solicitation of funds or a sale of goods or services to benefit the Hospital. It is against Hospital policy to use any sponsor or endorsement in connection with fund-raising activities unless the sponsor or endorsement has been verified by the Daviess Community Hospital Foundation.

17. **Conflicts of Interest**

Hospital employees should avoid all potential conflicts of interest. Adherence to this policy ensures that the Hospital's employees act with total objectivity in carrying out their duties for the Hospital.

To this end, Hospital employees may not be employed by, act as a consultant to, or have an independent business relationship with any of the Hospital's service providers, competitors, or third party payors. Nor may employees invest in any payor, provider, supplier, or competitor (other than through mutual funds or through holdings of less than 0.5 percent of the outstanding shares of publicly traded securities) unless they first obtain written permission from the Compliance Officer.

Employees should not have other outside employment or business interests that place them in the position of (i) appearing to represent the Hospital, (ii) providing goods or services substantially similar to those the Hospital provides or is considering making available. Employees may not use Hospital assets for personal benefit or personal business purposes. Employees may not have an interest in or speculate in products or real estate the value of which may be affected by the Hospital's business. Employees may not divulge or use the Hospital's confidential information -- such as financial data, payor information, computer programs, and patient information -- for their own personal or business purposes.

Any personal or business activities by an employee that may raise concerns along these lines must be reviewed with, and approved in advance, by the Vice President's or the Compliance Officer.

In order for the Hospital to comply with requirements of the Medicare program, every employee must notify a human resources supervisor or the Compliance Officer if he or she was at any time during the year preceding his or her employment with the Hospital employed by the Medicare intermediary or carrier. An employee's failure to make this disclosure at the time of employment could cause the Hospital to lose its right to participate in Medicare.

Because the Hospital participates in state programs such as Medicaid, Hospital employees must inform a human resources supervisor or the Compliance Officer if they have previously been employed by the State of Indiana with in the past five years.

18. **Independent Contractors & Vendors**

The Hospital purchases goods and services from many consultants, independent contractors, and vendors. The Hospital's policy is that all contractors and vendors who provide items or services to the Hospital must comply with all applicable laws and Hospital policies, including signing a Business Associate Agreement when protected health information is at risk. Contractors should bring any questions or concerns about Hospital practice or their own operations to the Compliance Officer.

Hospital employees who work with consultants, contractors, and vendors or who process their invoices should be aware that the Hospital's compliance policies apply to those outside companies as well. Employees are encouraged to monitor carefully the activities of contractors in their areas. Any irregularities, questions, or concerns on those matters should be directed to the Compliance Officer. Department managers will submit annual reviews of contracted services/contractors to the Compliance Officer and Committee Annually.

**19. Regulation**

The Hospital operates in a highly regulated industry, and must monitor compliance with a great variety of highly complex regulatory issues. The Hospital needs the cooperation of employees and professional staff members in complying with these regulations and identifying and reporting any potential lapses or violations. While the regulations may not carry criminal penalties, they control the licenses and certifications that allow the Hospital to deliver care to its patients. The Hospital's continued ability to operate and serve the community depends upon each employee's help in regulatory compliance.

Some of the regulatory programs which employees may **interface** with in the course of their duties include the following:

- Indiana State Department of Health hospital licensure
- JCAHO accreditation
- Medicare certification and conditions of participation
- Certificate of Need
- Controlled substance registration
- Pharmacy licensure and registration
- Clinical laboratory licensure and regulation
- Occupational Safety and Health regulation
- Building, safety, food service and fire codes
- Securities regulation.

The Compliance Officer can provide employees with information on these rules, and can direct questions or concerns to the proper person.

20. **Response to Investigations**

State and federal agencies have broad legal authority to investigate the Hospital and review its records. The Hospital will comply with subpoenas and cooperate with governmental investigations to the full extent required by law. The Compliance Officer is responsible for coordinating the Hospital's response to investigations and the release of any information.

If a department, an employee, or a professional staff member receives an investigative demand, subpoena, or search warrant involving the Hospital, it should be brought immediately to the Compliance Officer or Regulatory/Risk Manager. Do not release or copy any documents without authorization from the Compliance Officer, Regulatory/Risk Manager or Hospital counsel. If an investigator, agent, or government auditor comes to the Hospital, contact the Compliance Officer or Regulatory/Risk Manager immediately. In the Compliance Officer's or Regulatory/Risk Manager's absence, contact the Hospital's Chief Executive Officer or Administrative-on-call. Ask the investigator to wait until the Compliance Officer, Regulatory/Risk Manager or his/her designee arrives before reviewing any documents or conducting any interviews. The Compliance Officer, Regulatory/Risk Manager, his/her designee, or Hospital counsel is responsible for assisting with any interviews, and the Hospital will provide counsel to employees, where appropriate. If Hospital employees are approached by government investigators and agents, the employee has the right to insist on being interviewed only at the Hospital, during business hours or with counsel present.

If a professional staff member receives an investigative demand at his or her private office and the investigation may involve the Hospital, the staff member is asked to notify the Compliance Officer or Regulatory/Risk Manager immediately.

Hospital employees are not permitted to alter, remove, or destroy documents or records of the Hospital that are under investigation. This includes paper, tape, and computer records.

Subject to coordination by the Compliance Officer and/or Regulatory/Risk Manager the Hospital and its employees will disclose information required by government officials, supply payment information, provide information on subcontractors, and grant authorized federal and state authorities with immediate access to the Hospital and its personnel. Failure to comply with these requirements could mean that the Hospital will be excluded from participating in the Medicare and Medicaid programs.

Subcontractors of the Hospital who provide items or services in connection with the Medicare and/or Medicaid programs are required to comply with the Hospital's policies on responding to investigations. Subcontractors must immediately furnish the Compliance Officer, Regulatory/Risk Manager, Hospital counsel, or authorized government officials with information required in an investigation.

## SUBCONTRACTOR CERTIFICATION AND AGREEMENT OF COMPLIANCE

I hereby certify that I am a duly authorized officer of the independent contractor named below ("Contractor"). On behalf of Contractor and its officers, directors, employees, and agents, I certify that I have read the "Compliance Program Policy Manual" of Daviess Community Hospital (the "Hospital"), and fully understand the requirements set forth in that document. I certify that Contractor shall act in full accordance with all rules and policies of the Hospital. These rules and policies include the Hospital's commitment to comply with all applicable federal and state laws, and the Hospital's commitment to conduct its business in compliance with the highest ethical standards.

To this end, Contractor expressly agrees that the Hospital's "Compliance Program Policy Manual" shall be incorporated within and made a part of Contractor's agreement with the Hospital and shall survive termination of that agreement for any reason. Any failure of Contractor to comply with the rules and policies set forth in the Hospital's Compliance Program Policy Manual, or to report violations of these rules and policies, may result in immediate termination by the Hospital of its agreement with Contractor.

Name of Contractor:
Signed:_____
Date: _____