

# ELM CITY CORPORATE COMPLIANCE 2017

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## **Elm City Corporate Compliance Plan**

Every employee within Elm City plays a vital role in providing effective, accessible service to the people with disabilities and community that Elm City serves. Elm City Compliance Program was developed to help Elm City reach those goals.

The program is an agency-wide effort that includes standards of conduct, an educational program, monitoring systems, and sanctions for noncompliance and a confidential integrity line for reporting concerns regarding possible legal and ethical violations.

This Compliance Plan was adopted as a guide for each employee's conduct so that Elm City may fulfill its obligations to observe the laws and public policies affecting its business and to deal fairly with Elm City consumers, families, stakeholders, providers, vendors and third parties. It provides guidance to ensure that our work is done in an ethical and legal manner. Many of the topics discussed in this plan are covered in detail in Elm City Policy and Procedure Manual.

For the Compliance Program to be effective, it must have the cooperation of all employees. It contains resources to help resolve any questions about appropriate conduct in the work place. Please read it thoroughly. Your adherence to its spirit, as well as its specific provisions is absolutely critical to Elm City's future.

The need for a compliance plan is the result of multiple changes in the law and activities related to handling federal monies. Compliance plans became important following the enactment of Sarbanes-Oxley. The concept was extended to non-public companies through:

1. The Deficit Reduction Act of 2005 which mandated compliance plans for all organizations receiving more than \$5M in Medicaid payments.
2. The 2006 Federal Office of Inspector General audit of mental health provider services in Illinois which found \$11.5M Medicaid overpayments.
3. Federal Title XIX (Medicaid rules)
4. Federal CMS regulations in 42 CFR Part 430 et seq.
5. Federal (31 USC Section 3279) and State (740 ILCS 175) False Claims Acts
6. Illinois Title 59 Part 132
7. Illinois Medicaid Waivers for DDD and DMH

This plan is an integral part Elm City's ongoing efforts to achieve compliance with federal and state laws relating to billing for clinical services. The Plan creates a comprehensive and centralized system of oversight for bill coding, education, chart review, reporting and discipline. This Plan provides for oversight by the Corporate Compliance Officer. Although the intent is to encourage compliance through a centralized audit system, it remains the responsibility of each individual involved with the billing process, from case managers and other providers to clerical staff, to comply with the law

The effectiveness of the Compliance Program depends largely on the leadership efforts of management at Elm City. We expect our leaders to set the example, to be in every respect a model. They must ensure that those on their team have sufficient information to comply with the laws, regulations, and policies; as well as the resources to resolve ethical dilemmas. They must help to create a culture within Elm City that promotes the highest standards of ethics and compliance. This culture must encourage everyone in the organization to raise concerns when they arise. We must never sacrifice ethical and compliant behavior in the pursuit of business objectives. Management personnel are charged with specific duties that Elm City collectively:

1. Will maintain compliance standards and procedures reasonably designed to reduce the risk of criminal conduct and other violations of the Code of Ethics;
2. Will allow only specific, high-level personnel to be assigned ultimate responsibility for overseeing the Compliance Program;
3. Will not delegate substantial discretionary authority to any individual whom it knows, or through the exercise of due diligence should have known, had a propensity to engage in illegal activities;
4. Will take reasonable steps to communicate effectively and achieve its compliance with its standards and procedures for all employees and other agents;
5. Will utilize monitoring and auditing systems that are reasonably designed to detect unethical or wrongful behavior or criminal conduct by employees and agents;
6. Will also utilize and monitor its publicized reporting system whereby employees and other agents can report illegal conduct by others within the organization without fear of retribution; and
7. Will cooperate to the fullest extent reasonable and practical with appropriate federal, state, and local authorities investigating a potential violation of law. It is a violation of Elm City's policy for any employee to conceal an offense or to alter or destroy evidence

### **Policy Statement**

Elm City has established this compliance plan to ensure that quality services are provided at this institution in a manner that fully complies with all applicable state and federal laws and regulations. It is the policy of Elm City that

- (1) All employees are educated about the applicable laws and trained in matters of compliance,
- (2) Elm City departments will develop and maintain applicable written policies and procedures that address the issues of compliance risk.
- (3) All relevant employees, healthcare professionals, and when appropriate, contractors and other agents (i.e., board of directors) will be provided a copy of all policy documents that affect their position or area of responsibility. In addition, all policy documents will be either posted in a common area accessible to all employees or otherwise made available for inspection by all employees.
- (4) The Management Compliance team will review all organizational compliance policies on at least an annual basis. Policies directly related to the compliance

program must originate from the Management Team and be approved by the Board of Directors.

- (5) There is periodic auditing, monitoring and oversight of compliance with those laws,
- (6) There exists an atmosphere that encourages and enables the reporting of non-compliance without fear of retribution,
- (7) Responsibility is not delegated to persons with a propensity to act in a non-compliant manner, and
- (8) Mechanisms exist to investigate, discipline and correct non-compliance.

This Plan provides for the existence of a Corporate Compliance Officer who has ultimate responsibility and accountability for compliance matters. However, each individual employee or agent of Elm City remains responsible and accountable for his or her own compliance with applicable laws. Confirmed acts of non-compliance will be disciplined ("Discipline," as used throughout this policy shall include all steps described in Elm City Policy and Procedure manual including termination).

This Plan is intended to provide a framework for individual or departmental compliance efforts and to apply generally to all Elm City personnel and functions. Detailed plans, codes of ethics, or manuals covering compliance in specific areas may be separately developed and will fit within this framework. Each individual compliance plan or code must be reviewed and approved by the Corporate Compliance Officer and CEO

### **Structure**

There shall be appointed a Corporate Compliance Officer, reporting to the CEO and having access to Elm City Board.

Elm City's Vice-President will have responsibility for the role of Corporate Compliance Officer, reporting to the CEO and Elm City Board.

The Corporate Compliance Officer's functions include:

- (1) Review of guidelines for documentation and coding of clinical services,
- (2) Development and/or delivery of general and specialty-specific in-service training of employees on coding and proper documentation of services, and
- (3) Coordination of system-wide, department-specific audits of consumer files on an ongoing basis. Following any audit, results of the chart analysis are discussed with the care provider(s) involved.
- (4) Communicates to employees, via newsletter or other written communication, changes to the laws and regulations regarding billing.
- (5) Overseeing the education of personnel regarding proper compliance, the auditing and monitoring of the status of compliance, and the reporting, investigation, discipline and correction of non-compliance.

- (6) Responsibility to ensure programs are in place to guarantee that significant discretionary authority is not delegated to persons with a demonstrated or suspected propensity for improper or unlawful conduct.
- (7) Maintain records of documents needed and could reasonably be subject to governmental investigations

It is not expected that the Corporate Compliance Officer will have the knowledge or expertise necessary to ensure compliance with all laws and regulations that affect the various departments of Elm City. The CCO is responsible, however, for the overall program and must ensure that qualified, knowledgeable personnel within individual divisions or departments of Elm City assist in monitoring and educational functions.

The Management Compliance Committee will consist of the President/CEO, Vice-President/Corporate Compliance Officer, Vice President of Operations, Coordinator of Developmental Training, and Coordinator of Residential and Social Services. Additional staff can be included as required.

The Corporate Compliance Officer reports on Elm City's fulfillment of its compliance goals to the Management Compliance Committee at regularly scheduled management and to Elm City Board as needed. The report includes but is not limited to:

- (1) The level of compliance or non-compliance found as a result of monitoring and auditing,
- (2) The success of efforts to improve compliance, including training and education
- (3) The non-delegation of discretionary authority to those with the propensity to act improperly, and
- (4) Corrective or disciplinary action taken with respect to those found to be non-compliant.

The Corporate Compliance Officer has full access to all personnel and relevant documentation (subject to state or federal confidentiality laws) deemed necessary to perform his/her oversight and reporting duties.

The Corporate Compliance Officer and CEO may appoint such staff as deemed necessary to assist in the performance of the responsibilities outlined above. Any staff assigned to the Corporate Compliance Officer will be treated as the Corporate Compliance Officer for purposes of cooperation with his/her efforts to perform his/her duties.

Legal counsel, independent consultant, and other external experts may be hired to assist the CCO and CEO for situations beyond the skills of existing staff, at the recommendation of the Board, or for any situation where specialized knowledge is required.

## **Policy And Procedure Manual**

Elm City will maintain a written policy and procedure manual that will be updated as needed to meet the changing situations within the agency. Changes in policy will come through the CEO and Board of Directors. Copies of the manual will be stored in various work areas so all employees have access to them. It is also stored on the ECC LAN network on Drive S as a PDF file to be accessed by any employee.

### **POLICY COMMITTEE**

Board meeting 10/24/17. The annual policy review was done by the Board. All Elm City policies are reviewed in December by the CEO and are maintained in a PDF file on Drive S of the ECC LAN which is available to all staff. A paper copy is maintained by the CEO. Once established most policies do not require many changes. The Elm City Policy and Procedure manual is about 750 pages long. It is used to comply with a long list of regulatory and compliance rules set by various state regulations, accreditation organizations, and good business practices. Many policies have been effect for over 15 years. Some documents were specifically developed for Elm City based issues. Others are generic documents 'borrowed' from other organizations doing similar work. Still others are simply state regulations which are slightly reworded to be policy such as medication administration which is word for word Rule 116. There is a long standing list of policies that annually get reviewed by the Board. The ones reviewed include:

1. Policy on Building Usage.
2. Policy on Cash Management/Cash Control.
3. Policy for Individual Input.
4. Policy on Donations.
5. Endowment Fund Policy.
6. Investment Policy
7. Memorial Fund Policy.
8. Policy on the Sale and Use of Tobacco.
9. Policy on Struck Work
10. Conflict of Interest Statements
11. Board Governance Policies
12. Executive Team Succession Planning
13. Policy on Accessibility.
14. Policy on Behavior Management and Use of Restrictive Procedures.
15. Policy on Individual Rights.
16. Policy on Death, abuse, neglect, rape and sexual assault.
17. Policy for Prevention and Control of Infectious Disease.
18. Short and Long-Range Planning Document
19. Policy on Alcohol & Substance Abuse and the Drug Free Workplace.
20. Policy on Regular Maintenance.
21. Policy on Emergency Procedures.
22. Affirmative Action Policy and Report.
23. Recognition Policy.
24. Non Harassment Policy

25. By-Laws & Purposes (Must be completed in time to advertise proposed changes, if any).
26. Review of Board Effectiveness.
27. Review of Mission Statement.
28. Review of Policy on Leadership/Policy on Legal Requirements.
29. Review of Code of Ethics.
30. Code of Ethics Declaration

### **Reporting**

Any employee who perceives or learns of an act of non-compliance should speak to their supervisor. Supervisors are required to report these issues. A written record of every report received will be kept for a period of six years. Reporting anonymously can be done by putting information in writing and giving it to the Compliance Officer. Every effort will be made to preserve the confidentiality of reports of non-compliance. All employees must understand, however, that circumstances may arise in which it is necessary or appropriate to disclose information. In such cases disclosures will be on a "need to know" basis only.

All employees are required to report acts of non-compliance. Any employee found to have known of such acts but who failed to report them will be subject to discipline.

No employee of Elm City shall in any way retaliate against another employee for reporting an act of non-compliance. Any confirmed act of retaliation shall result in discipline.

In the last several years DHS Office of Inspector General has significantly increased emphasis of reporting potential abuse and neglect issues directly to OIG within the 4 hour period specified within OIG regulation. This had previously been somewhat lax in enforcement. In the last two years OIG training done by OIG has increasingly stressed the requirements and potential negative outcomes if the rule is not followed. OIG has specifically increased compliance requirements for abuse, neglect, financial exploitation, and in 2015 expanded the definition of sexual abuse. Sexual abuse now includes any depiction of nudity and sexual acts. At the time of this writing how that will cover activities commonly found in readily available commercial movies and cable TV such as HBO/Showtime is unknown.

### **Investigation**

The Corporate Compliance Officer will investigate every report of non-compliance as soon as practicable. In general this will be within 10 working days from the time the report of non-compliance is submitted. Investigation may include interviewing employees and/or reviewing documentation (subject to laws on consumer confidentiality). Each employee must cooperate with such investigations and may be disciplined for failing to do so. Length of the investigation can vary depending on the requirements of each report. The initial target would be within 30 working days from the time the investigation starts.

Reports are not considered finished until they have been reviewed by the Board of Directors at their next scheduled meeting.

Upon completing an investigation the Corporate Compliance Officer will make a report to the CEO. The report will be the basis for the Corporate Compliance Officer's plan or recommendation of corrective action or discipline. Reports will be retained for six years.

Under this Plan, there can be both internal and external (i.e. by an independent consultant or other professional) auditing of proper coding and chart documentation. Internal auditing is done by staff reporting to the Compliance Office, who will conduct periodic chart reviews. Each clinical provider who bills for services at Elm City will be subject to annual chart reviews for proper documentation and coding of clinical services. The Compliance Office analysts will communicate the results of their reviews to the clinical provider and to the Corporate Compliance Officer. If the level of compliance is found to be low, the Corporate Compliance Officer will implement a plan of correction and/or education (see Sanctions).

### **Response to Investigation**

State and federal agencies have broad legal authority to investigate health care providers and review their records. The Elm City Center entities will comply with subpoenas and cooperate with governmental investigations to the full extent required by law. The Corporate Compliance Officer is responsible for coordinating the 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 institution, it should be brought immediately to the Corporate Compliance Officer. Do not release or copy any documents without authorization from the Corporate Compliance Officer or legal counsel. If an investigator, agent, or government auditor comes to the institution, contact the Corporate Compliance Officer immediately. In the Corporate Compliance Officer's absence, contact the organization's CEO. Ask the investigator to wait until the Corporate Compliance Officer or his designee arrives before reviewing any documents or conducting any interviews. The Corporate Compliance Officer or his designee is responsible for assisting with any interviews, and the institution will provide counsel to employees, where appropriate. If employees are approached by government investigators and agents, they have the right to insist on being interviewed only at the facility during business hours or with counsel present.

Employees of the Elm City Center entities are not permitted to alter, remove, or destroy documents or records of their employer. This includes paper, tape, and computer records.

Subject to coordination by the Corporate Compliance Officer, Elm City 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 facility and its personnel. Failure to comply with these



requirements could mean that the organization will be excluded from participating in the Medicaid programs.

Subcontractors who provide items or services in connection with the Medicare and/or Medicaid programs are required to comply with these policies on responding to investigations. Subcontractors must immediately furnish the Corporate Compliance Officer, legal counsel, or authorized government officials with information required in an investigation.

### **Sanctions**

Every confirmed act of non-compliance may result in corrective action or discipline. The Corporate Compliance Officer will decide the sanction for a single act of non-compliance. The CEO may advise on sanctions for severe or repeated instances of non-compliance. Sanctions may include a requirement to follow a certain process or procedure in the future, restitution, and/or discipline. If a provider or other employee fails to comply with billing or documentation requirements repeatedly, sanctions may be more severe. The Corporate Compliance Officer will review the recommended corrective action or discipline with the CEO (convening a meeting on an as needed basis to address these issues). Before the imposition of sanctions, the department manager will be informed of the disciplinary actions.

For employees plans of correction and discipline may include but are not limited to:

- (1) A requirement to undergo training;
- (2) A period of required supervision or approval of documentation before bills can be issued;
- (3) Expanded auditing, internal or external, for some period of time until compliance improves;
- (4) Self-reporting of violations;
- (5) Returning/refunding gifts, funds, and any other item/event of value that exceeds Elm City's policy.
- (6) In sufficiently egregious cases, discipline and potential termination.

For Elm City plans of correction can include the items listed above plus:

- (1) Repayment of over payments
- (2) Self-disclosure to regulatory officials

The purpose of this Plan is to ensure that services are adequately documented and that properly coded bills are submitted only for documented services. This Plan is to be read in conjunction with and is an integral part of Elm City Compliance Plan, which is set forth in a separate document.

Elm City acknowledges that this plan is only the beginning of its efforts to institute a program and oversee compliance with applicable laws and regulations. The key to

success, in which all employees play a part, is ongoing adherence to the highest standards of conduct and the development of a workable system in which employees are educated about compliance and participate in ongoing review of their success in that regard.

### **Plan Overview**

Recent changes in the laws and regulations affect how providers may bill their services. This Plan has its origin in the new laws, but is intended to set standards for billing of all services to all payors.

The goal of this Plan is to ensure that services are properly documented and accurately billed and that services rendered but not properly documented are not billed.

### **Billing Compliance**

Billing will be done in compliance with all applicable state and federal laws and regulations. Specifically, no bill will be issued for a clinical service unless it was actually performed and documented. Bills for services shall be coded accurately according to the documentation of the services provided.

Many people, throughout Elm City, have responsibility for entering charges and codes for clinical services. Each of these individuals is expected to monitor compliance with applicable billing rules. Any false, inaccurate, or questionable claims should be reported immediately to a supervisor or to the Compliance Office.

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:

- 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
- Billing excessive charges

In compliance with federal law, Elm City does not permit charging for any Medicaid service at a rate higher than that approved by the state or accepting any payment as a precondition of service at Elm City.

If there is any question whether Elm City may bill for a particular service, either on behalf of a provider or on its own behalf, the question should be directed to the Corporate Compliance Officer for review. Elm City employees should not submit claims for other entities or claims prepared by other entities, including outside consultants, without approval from the Corporate Compliance Officer.

The consequences of submitting false claims can be very serious. According to the Federal False Claims Act 31: “The act establishes liability for any person who knowingly presents or causes to be presented a false or fraudulent claim to the U.S. government for payment as 3 times the government’s damages plus civil penalties of \$5,500 per \$11,000 per claim.

The act also has a provision for Whistleblower which “allows citizens with evidence of fraud against government contracts and programs to sue, on behalf of the government, in order to recover the stolen funds. The citizen whistleblower may be awarded a portion of the funds recovered, typically between 15 and 25 percent.”

### **Non-Delegation of Authority**

The Corporate Compliance Officer has the authority to revoke the delegation of discretion to any employee found to be non-compliant. Simply as an example, a person responsible for billing clinical services who is found to be coding bills improperly may be required to submit bills to the Corporate Compliance Officer or designee for some period of time necessary to ensure proper compliance

### **Education and Training**

The Corporate Compliance Officer will monitor the education of employees concerning the existence of the compliance program, the contents of this plan, and the need to abide by the specific laws and regulations affecting individual departments and employees of Elm City. The Corporate Compliance Officer will ensure that Elm City employees receive a copy of the Corporate Compliance Plan and the Code of Ethics adopted by the Board of Directors. The Corporate Compliance Officer will inform employees of changes in the laws or regulations periodically and systematically through written communications and in-service training.

All current and new Elm City employees will have access to this plan. Reference to its existence and how to secure a copy will appear in the Personnel Policy and Procedure Manual.

### **Monitoring and Auditing**

The Corporate Compliance Officer will be responsible for monitoring employees' compliance with applicable laws and regulations. The CCO will ensure that the level of compliance in each division or department is audited periodically. The CCO will arrange as well for external auditing as deemed necessary.

If the Corporate Compliance Officer discovers that a department's or individual's level of compliance is unacceptable, the CCO may impose a plan of corrective action, which may include future monitoring of an individual or department on a more frequent basis. Corrective actions and sanctions for acts of non-compliance will be managed as outlined previously (see "Sanctions").

**Non-Retaliation**

It is the policy of Elm City that no person shall retaliate, in any form, against a person who reports in good faith an act or suspected act of non-compliance (although employees may be disciplined for making intentionally false reports of non-compliance). Any person who is found to have retaliated for such a report in violation of this policy shall be subject to discipline.

**Confidentiality**

All consumer information (including clinical records) must be kept strictly confidential and not released to anyone outside the provider without written consumer consent or lawful court order. Laws governing the release of HIV-related information are even stricter. All personnel must avoid discussing confidential information with outsiders, or where others, including family, can overhear them. Internal access to clinical records is not appropriate unless there is a legitimate, work-related need to see the information. More details on Confidentiality are in the ECC Policy and Procedure Manual

**Video and Electronic Recording**

Elm City has used cameras and electronic security for many years initially as required security for production work. The cameras quickly helped resolve problems when complaints and accusations were filed by simply going back to the event and viewing what happened. During a CILA review by DDD/Bureau of Quality Management, BQM insisted that using video without significant documentation proving agreement by the people involved is a significant human rights issue even though cameras are not used in bedrooms/bathrooms in any setting and families/guardians were aware the cameras were used. Employment attorneys with Rammelkamp Bradney are equally insistent that there is no Illinois law or regulation against the use of video, particularly if it is not in bedrooms or bathrooms. BQM admits no restrictive laws exist so their stance is basically a philosophical issue. An annual signature/paperwork process was put into place for anyone coming to Elm City. The policy procedure manual has an expanded policy on the use of video. Cameras are increasingly being used all over Illinois for the same safety and compliance issues we have. In fact OIG and Public Health are strong supporters of the use of cameras.

In 2015, Illinois law was changed to allow families to have their own video recording equipment in bedrooms or restrooms to assure services were provided correctly. There was no requirement that the service provider organization also provides transmission of information to any source over their own on-line system. Elm City uses Mediacom which has download speed limits of 2 meg which becomes very slow, very quickly. Using our system to transmit resident controlled video information would affect our own video performance

**Financial Review**

During a 2013 DHS financial review, the reviewer felt our financial policies needed to be expanded to include to following items op “reduce the risk of errors and inconsistencies in the handling of fiscal matters.

1. The basis of accounting
2. Journal/ledgers to be maintained
3. Contract/lease authority
4. Restricted/unallowable grant funds cost
5. Competitive bid requirements.
6. Monthly bank reconciliations with signature

All these items were tasks we have done for years. Policy was expanded for each item, edited into the policy manual and indexed.

### **Discrimination**

It is against the law to discriminate against an employee, consumer, or stakeholder on the basis of race, color, sex, age, national origin or other protected status. Persons served also cannot be discriminated against because of their ability to pay for care. Any person with information that a provider or individual is improperly discriminating or being discriminated against should report that information.

### **Conflicts of Interest**

All personnel associated with Elm City should avoid conflicts of interest and situations that even look like a conflict of interest. This means that personnel should not personally benefit from doing business with Elm City should not have independent relationships with those who deal with Elm City, should not use their employer's property for their personal benefit without permission, and should not compete with Elm City. Any potential for conflict of interest should be disclosed to your supervisor.

### **Record Retention**

State and federal laws require that providers and others within Elm City keep certain records for specified periods of time. It is Elm City policy to keep records for as long as the law requires. The legal requirements are many and varied so before you discard any documentation; it is wise to check with your supervisor or the Compliance Office regarding any requirements that might exist. All Elm City personnel should learn and follow the record retention policies of ECC. They are listed in the policy and procedure manual.

### **Regulations**

Elm City operates in a highly regulated industry, and must monitor compliance with a great variety of highly complex regulatory schemes. The cooperation is needed of employees and professional staff members in complying with these regulations and bringing lapses or violations to light. While the regulatory schemes may not carry criminal penalties, they control the licenses and certifications that allow the system to deliver care to its consumers. The system'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 deal with in the course of their duties, include the following:

- Illinois State licensure
- CARF accreditation
- Medicaid certification
- Certificate of Need
- DHS Bureau of Accreditation. Certification, and Licensure reviews such as, Developmental Training Review, Administrative Review
- DHS Bureau of Quality Management greatly expanded DDD waiver criteria that must be complied. They specifically review:
  - Rule 115 – CILA residential settings
  - Rule 116 - medication administration
  - Rule 119 – Developmental training
- DMH Post payment and clinical reviews. They review”
  - Rule 132 – Mental health Medicaid regulations
- Office of Inspector General
- Occupational Safety and Health regulation
- Building, safety, food service and fire codes
- Public Health Nurse Registry

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

### **Scientific Misconduct**

Those who receive grants must obey certain federal requirements described in regulations. Some of the regulations apply to "scientific misconduct," such as falsifying data or copying results from other studies. Elm City does not tolerate scientific misconduct and complies fully with governmental requirements for investigating and sanctioning that behavior. Any person who learns of or suspects scientific misconduct should report that to the Corporate Compliance Officer.

### **Individual Responsibility**

Each employee is personally responsible to act in accordance with the policies of Elm City as set forth in this document and otherwise. Violating these policies or failing to report violations could subject an employee to disciplinary action, up to and including termination.

### **Screening and Background Checks**

Elm City is committed to maintaining high quality care and service as well as integrity in its financial and business operations. Therefore, Elm City will conduct appropriate

screening of key providers, employees, independent contractors, and business partners to ensure that they have not been sanctioned by a federal or state law enforcement, regulatory, or licensing agency. Details of this procedure are outlined in the ECC Policy and Procedure Manual.

Background checking has significantly expanded in the last three years. There has always been a general check required, but recent changes mandate specific checks must be completed for a person to remain employed in community based programs:

- The portal to Public Health must be maintained to explain when a person became employed. This is used to track and employees financial status for the courts
- Illinois Sex Offender database statewide review
- CANTS review (as of 2011) is an agreement between DCFS and DHS. A CANTS finding at any level is immediate termination.
- Electronic fingerprinting
- State police criminal background check
- Written evidence of Abuse/Neglect, CPR, first aid training must exist.

### **Tax Issues**

Elm City, like many not-for-profit institutions, is tax-exempt because of our charitable missions. The IRS imposes strict rules on such organizations. In general, a tax-exempt entity may not permit insiders (such as trustees, officers or others who can influence organization decisions) to benefit personally from dealing with the organization. Nor may any private person (insider or not) receive a benefit from the organization beyond what is necessary to let the organization fulfill its mission (e.g. employees may be paid a fair salary). Issues such as these come up most often with compensation arrangements, contracts, loans, and leases. Those we do business with should not receive more than fair market value for the goods or services they provide. Violations of the tax rules can result in an organization losing its tax exemption, or can cause the IRS to penalize the person receiving an excess benefit, and the institution personnel who approved the payment.

### **Anti-Kickback Laws**

The federal anti-kickback laws are broadly written to prohibit Elm City personnel and representatives from knowingly and willfully offering, paying, asking for, or receiving any money or other benefit, directly or indirectly from third parties in connection with items or services billed to federal programs. The anti-kickback laws must be considered whenever something of value is given or received by an Elm City entity or its representatives or affiliates that are in any way connected to consumer services. This is particularly true when the arrangement could result in over-utilization of services or a reduction in consumer choice. Even if only one purpose of a payment scheme is to influence referrals, the payment may be unlawful.

There are many transactions that may violate the anti-kickback rules. For example, no one acting on behalf of Elm City may offer gifts, loans, rebates, services, or payment of any kind to a group who refers consumers to Elm City, or to a consumer, without

consulting his or her supervisor, legal counsel or the Corporate Compliance Officer. Rentals of space and equipment must be at fair market value, without regard to the volume or value of referrals that may be received in connection with the space or equipment. Fair market value should be determined through an independent appraisal.

### **Entertainment and Gifts**

It is recognized that business dealings may include a shared meal or other similar social occasion, which may be proper business expenses and activities. More extensive entertainment provided by vendors or service providers, however, only rarely will be consistent with Elm City policy and should be reviewed and approved in advance by the CEO. Elm City employees may not receive any gift under circumstances that could be construed as an improper attempt to influence the provider's decisions or actions. When an employee receives a gift that violates this policy, the gift should be returned to the donor and reported to the Corporate Compliance Officer. Gifts may be received when they are of such limited value that they could not reasonably be perceived by anyone as an attempt to affect the judgment of the recipient. For example, token promotional gratuities from suppliers, such as advertising novelties marked with the donor's name (e.g. coffee mug) are not prohibited under this policy.

Whenever an employee or a professional is not sure whether a gift is prohibited by this policy, the gift must be reported to the Corporate Compliance Officer upon its receipt.

### **Market Competition**

Elm City 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 community-based services and Elm City 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.

### **Discussion with Competitors**

Elm City policy requires that the rates its affiliates charge for care and related items and services, and the terms of its third-party payer contracts, must be determined solely by the individual entities which 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, salaries, bids/bid formulas, discounts, credit arrangements, selection of markets, territories, 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.

### **Boycotts**

Elm City policy prohibits any agreement with competitors to boycott or refuse to deal with a particular person or persons, such as a vendor, payer, 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 must be conducted in good faith. Exclusive arrangements with payers, vendors, and providers must be approved by legal counsel based on an analysis of the relevant market

### **Tax Exempt – 501c3 Status**

As non-profit providers serving charitable purposes, Elm City entities hold Federal tax-exempt status under section 501(c) (3) of the Internal Revenue Code. In order to qualify for that exemption, and to be eligible to receive tax-deductible contributions, an organization must be operated exclusively for charitable purposes. The organization's exempt status may be revoked if it permits any private inurement of its assets to organization insiders or allows individuals to enjoy more than an insubstantial private benefit from the organization's activities. Even if exempt status is retained, the organization may be subject to "intermediate sanctions" penalty taxes if it enters into transactions that excessively benefit private individuals. In addition, the organization will be subject to tax (at corporate rates) on any income it receives from trade or business activities unrelated to its charitable purpose.

Potential sources of private inurement, which should be brought to the attention of the CCO and counsel if the arrangement is not negotiated at arm's length, include:

- Sales, exchanges, or leases of property between the entity and a private individual
- Loans or other extensions of credit between the entity and a private individual
- Contracts for goods, services, or facilities between entity and a private individual
- Payment or reimbursement of a private individual's expenses
- Partnerships or joint ventures between Elm City and other groups

### **Private Benefit**

In contrast to the prohibition against private inurement, which only applies to organization insiders, the private benefit restriction applies to all individuals, regardless of their relationship to the organization. The private benefit limit requires the tax-exempt

entity to serve public rather than private interests. Unlike the absolute prohibition on private inurement, however, incidental private benefit will not jeopardize an organization's exempt status. The Corporate Compliance Officer and CEO should review contracts with commercial providers of goods or services, compensation packages of non-insiders, and joint ventures or partnerships with non-organization personnel or entities to ensure that the arrangements are reasonable and primarily benefit the entity's charitable functions rather than private interests.

### **Intermediate Sanctions**

Many situations that raise concerns about private inurement or private benefit are also likely to create a tax liability under the "intermediate sanctions" rules. Intermediate sanctions allows the IRS to assess penalty taxes when certain individuals or entities, referred to as "disqualified persons," receive "excess benefits" from an exempt organization. A "disqualified person" is defined as any person or entity that is in a position to exercise substantial influence over an organization. The organization's officers, directors, and trustees, as well as substantial donors and the five highest-paid employees, are likely to be considered disqualified persons.

To create a presumption that a given arrangement will not create an excess benefit, the compensation packages of disqualified persons, as well as any other potential excess benefit transactions, must be approved pursuant to the intermediate sanctions safe-harbor procedure. Specifically, the arrangement should be approved by the organization's Board (or a board committee); any board members with a conflict of interest regarding the transaction under consideration should excuse themselves. The board or committee must document the basis for its decision to enter into the transaction; minutes should include a description of any conflicts of interest, the comparable data that was reviewed, and the basis for concluding that the disqualified person would not receive an excess benefit.

### **Unrelated Business Taxable Income ("UBTI")**

A section 501(c) (3) organization will generally be exempt from federal income tax. The organization will be taxed at regular corporate rates, however, on income that it receives from an unrelated trade or business income (UBTI) that it regularly carries on. Investment income or gains generally will not constitute UBTI unless those proceeds are debt-financed or are received from a controlled corporation. UBTI may be offset by deductions for costs--such as rent or labor--that are connected with the UBTI.

A UTBI is any activity that is performed by the tax-exempt organization and does not substantially relate to its exempt purpose. An activity will be substantially related if it contributes importantly or is causally related to the organization's exempt purpose, but will not be so related if conducted on a scale larger than reasonably necessary to perform functions in furtherance of that purpose. A UTBI does not include any trade or business in which substantially all the work is performed without compensation or which is carried on primarily for the convenience of the organization's consumers, employees, or officers.

**Political Campaigns and Lobbying Activities**

The Internal Revenue Code prevents a tax-exempt organization, or any of its representatives acting in an official capacity, from participating or intervening in any political campaign on behalf of, or in opposition to, any candidate for public office. The organization is also prohibited from carrying on more than an insubstantial amount of lobbying, propaganda activities, or other attempts to influence legislation.

**Charitable Solicitations**

A tax-exempt entity is required to provide written disclosure to any donor who retains an interest in contributed property (e.g., a charitable gift annuity, lead trust, remainder trust, or pooled income fund) that may be commingled with other tax-exempt assets in a collective investment vehicle. Similarly, the organization must provide disclosures to donors who have made quid pro quo contributions--that is contributions for which the donor has received something of value in return.

**Purchasing**

Purchasing decisions must be made in accordance with applicable policy. In addition, the prohibitions discussed in a preceding section of this Manual entitled "Payments, Discounts, and Gifts," apply to purchasing decisions made on behalf of the particular organization. Purchasing decisions must in all instances be made free from any conflicts of interest that could affect the outcome. Elm City is committed to a fair and objective procurement system that results in the acquisition of quality goods and services at a fair price. Any concerns about the legality of the terms of a proposed transaction, including but not limited to, inducements offered by a vendor or supplier, should be discussed with legal counsel or the Corporate Compliance Officer.

**Independent Contractors and Vendors**

Goods and services are purchased from many consultants, independent contractors, and vendors. All contractors and vendors who provide items or services to Elm City entities must comply with all applicable laws and Elm City policies. Contractors should bring any questions or concerns about Elm City practices or their own operations to the Corporate Compliance Officer.

Personnel who work with consultants, contractors, and vendors or who process their invoices should be aware that these compliance policies apply to those outside companies as well. Employees are encouraged carefully to monitor the activities of contractors in their areas. Any irregularities, questions, or concerns on those matters should be directed to the Corporate Compliance Officer.

**Smoking and E-Cigarettes/Vaping**

Elm City has further restricted smoking/chewing tobacco, electronic cigarettes, vapes, and vaping on properties it operates. State smoking regulations prohibit smoking within 15 feet of an entrance door or open window. Additionally as more consumers have used oxygen tanks, smoking is prohibited within our buildings and signs are posted in building where oxygen tanks are being used. The Elm City Board of directors decided to add electronic cigarettes and vaping to the smoking restriction in July 2015

**Fund Raising**

In furtherance of our charitable purposes, Elm City may conduct fund-raising activities through various means. The organizations comply with Illinois registration, record keeping, and reporting requirements with respect to its fund-raising activities. Elm City policy requires that all solicitation of charitable contributions must be done under the supervision of Elm City's Corporate Compliance Officer. Elm City entities do not authorize any employee or other individual to use any entity's name in any fund-raising activities not approved or supervised by the organization's development office.

It is illegal for any person to make any false, deceptive, or misleading statement in connection with a solicitation of funds or a sale of goods or services to benefit an entity within Elm City system. It is against policy to use any sponsor or endorsement in connection with fund-raising activities unless the sponsor or endorsement has been verified by the entity's development office.

If an organization or its employees violate the law on charitable donations, the organization could lose its ability to raise funds. In addition, individuals could be subjected to criminal prosecution resulting in fines and imprisonment.