RURAL PRIVATE HOSPITALS
ASSOCIATION OF KENYA
The Comprehensive Care Society

Anti-Fraud Policy

2021

ANTI-FRAUD POLICY FOREWORD

Fraud by its nature is a deliberate and dishonest act, whose perpetrators willfully seek to confer an underserved benefit either to themselves or to someone else. In the context of healthcare examples of fraud are:

- Misrepresentation of the type or level of service provided.
- Misrepresentation of the individual rendering service.
- Billing for items and services that have not been rendered.
- Billing for services that have not been properly documented.
- Billing for items and services that are not medically necessary.
- Seeking increased payment or reimbursement for services that are correctly billed at a lower rate.

Fraudulent actions therefore result in abuse, are inconsistent with accepted sound fiscal, business, or medical practices, and result in an unnecessary cost or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care.

We in the Rural Private Hospitals Association of Kenya (RUPHA), through the preamble of our constitution, affirm our commitment to provide comprehensive care to the Medically Underserved Areas (MUAs), Medically Underserved Populations (MUPs) and Health Provider Shortage Areas (HPSAs). These communities that we are dedicated to are often the most marginalized both economically and geographically. We concur with the assessment of the World Bank that;

"Fraud has a disproportionate impact on the poor and most vulnerable, increasing costs and reducing access to services, including health, education, and justice. Corruption in the procurement of drugs and medical equipment drives up costs and can lead to sub-standard or harmful products. The human costs of counterfeit drugs and vaccinations on health outcomes and the life-long impacts on children far exceed the financial costs".

Given the foregoing, and cognisant of our responsibility to safeguard healthcare resources for the benefit of all, the Executive Committee of RUPHA has set out to prepare and publish an Anti-Fraud Policy that will provide a framework for identifying, investigating, and eliminating both opportunities for fraud and actual fraud within its network of healthcare providers. It is our hope, that this Anti-fraud policy ushers in an era of vigilance against corruption in the healthcare system and inspires a sector-wide reflection on what all of us can and should do to safeguard the healthcare resources of our nation.

1. PREAMBLE

This antigraft policy is developed by RUPHA for and on behalf of its members

RUPHA is committed to the highest possible standards of openness, transparency and accountability in all its affairs. We wish to promote a culture of honesty and opposition to fraud in all its forms.

The purpose of this policy is to provide the membership of the Association with:

- A clear definition of the term "fraud".
- A definitive statement forbidding fraudulent activity in all its forms.
- A summary to their responsibilities for identifying exposures to fraudulent activities, for establishing controls and procedures for preventing such fraudulent activity and/or detecting such fraudulent activity when it occurs.
- Guidance to members as to which action should be taken where they suspect any fraudulent activity.
- Clear guidance as to which of the responsibilities fall under conducting investigations into fraud related activities.
- Assurance of protection in circumstances where they may be at risk of victimization as a consequence of reporting, or being a witness to fraudulent activities.
- This also includes any 'whistle-blowers'.

This document is intended to provide guidance and should be read in conjunction with:

- Anti-Corruption and Economic Crimes Act, No. 3 of 2003.
- Public Officer Ethics Act, No. 4 of 2003.
- Ethics and Anti-Corruption Commission Act, No. 22 of 2011.
- Leadership and Integrity Act, No. 19 of 2012.
- Bribery Act, No. 47 of 2016.

This document will be reviewed periodically in order to determine whether it remains useful, relevant, and effective.

2. DEFINITIONS OF TERMS

2.1. ACCOUNTABILITY

A system of internal and external checks and balances aimed at ensuring that public officers carry out their duties properly and are held responsible if they fail to do so. Responsibility for the use of resources and the decisions made, as well as the obligation to demonstrate that work has been done in compliance with agreed upon rules and standards and to report fairly and accurately on performance results vis-a-vis mandated roles and/or plans.

2.2. BRIBE

An inducement whether, monetary or non-monetary, by one person to another person who holds a public or private office with the intention to influence them to act or forego to act as required of them in their official capacity.

2.3. CODE OF CONDUCT AND ETHICS

The Specific Code of Conduct and Ethics developed by a public body pursuant to Part II of the General Code of Conduct and Ethics established pursuant to Part III, of the Public Officer Ethics Act No. 4 of 2003.

2.4. ETHICS

The standard of morality that a member of RUPHA must commit themselves to follow.

2.5. HUMAN RIGHTS

Rights possessed by all persons, by virtue of their common humanity, to live a life of freedom and dignity.

2.6. FRAUD

The theft or misuse of funds or other resources, by a member of RUPHA, an employee of RUPHA or an employee of its member or a third party, which may or may not also involve misstatement of financial documents or records to conceal the theft or misuse.

- Theft of funds or any resources.
- Falsification of costs or expenses.
- Forgery or alteration of documents.
- Destruction or removal of records.
- Inappropriate personal use of RUPHA's assets, public assets, member facility assets, and any other assets held in trust for a third party.
- RUPHA employees or its members seeking or accepting cash, gifts, or other benefits from third parties in exchange for preferment of the third parties in their dealings.
- Blackmail or extortion.
- Offering, promising or giving of a bribe and requesting, agreeing to receive or accepting a bribe for any reason.
- Making facilitation payments.
- Paying of excessive prices or fees to third parties with the aim of personal gain.

2. DEFINITIONS OF TERMS

Fraud in all its forms is wrong, and is unacceptable to RUPHA and its members. This is because where fraud occurs:

- It causes a loss to RUPHA, its members, our beneficiaries and the countries citizenry in general.
- It may have a major negative impact on RUPHA's reputation and that of its membership.

4. POLICY OBJECTIVES

- That fraud is eliminated from all RUPHA activities and those of its members.
- That any indications of fraud are thoroughly investigated and dealt with in a firm and controlled way.
- To enhance the capacity of RUPHA members to prevent fraud.
- To promote the participation of RUPHA employees and employees of its members in the prevention of fraud.
- To ensure compliance of RUPHA and its members with national recommendations on fraud prevention.

5. RESPONSIBILITIES OF RUPHA MEMBERS

- RUPHA members should be familiar with types of fraud that may occur in their area of operation and be alert to any indication of fraud or improper activity.
- RUPHA members will maintain controls to deter occurrences of fraud.
- RUPHA members will be required to ensure that all staff under their control will be given a copy and acknowledge receipt.
- RUPHA members will ensure that their staff will be encouraged to report suspected fraud.
- RUPHA members will endeavor to ensure that all their employees carry out their work in such a way as to prevent fraud from occurring in their workplace.
- RUPHA members will encourage their employees to be alert for occurrences of fraud, be aware that unusual transactions and behaviors could be an indication of fraud and report potential cases of fraud as outlined below.

6. PROCEDURES FOR HANDLING SUSPECTED FRAUD

This procedure covers RUPHA and all its member facilities including members of staff:
The responsibility to implement the procedure shall lie with the institutional chairperson of the Integrity Promotion Committee (IPC).

6.1 Alleged fraud events (actions) shall be reported to the chairperson IPC by the complainant either in person, in writing, or by telephone and shall be recorded in a prescribed form (annex 1).
6.2 The Chairperson IPC shall call for monthly meetings of the IPC to deliberate and consider received reports, make recommendations and forward them within one week to the Chief Executive Officer (CEO) / Managing Director (MD) for action.
6.2.1 Where necessary the IPC shall carry out further investigation and submit the reports within two weeks to the CEO/MD.
6.2.2 Where investigations point out to the possibility of a fraudulent act having being committed, the current chairperson of IPC shall recommend to the CEO/MD that the accused steps down to pave way for the investigations.
6.3 The Chairperson IPC shall on a quarterly basis prepare a detailed report and submit it to the CEO/MD.

7. REPORTING SUSPECTED FRAUD

Employees who suspect fraud SHOULD NOT do any of the following:

- Contact the suspected individual(s) directly in an effort to determine facts, demand explanations or restitution.
- Discuss the issue with anyone within RUPHA or the member other than the persons listed as members of the Integrity Promotion Committee of RUPHA or the member facility.
- Discuss the issue with anyone outside of RUPHA or the member facility, except as required by law.

If preferred, the suspected fraud may be reported to the RUPHA confidential helpline. This can also be used if the circumstances are such that reporting suspected fraud as above is inappropriate, or if the person to whom it is reported is unable to assist. This helpline is monitored by the RUPHA Integrity Promotion Committee and is accessed as follows:

- By email to fraudoffice@rupha.co.ke
- By telephone to xxxxxxxxxxxx
- By postmarked “Private & Confidential” to Chairperson Integrity

Promotion Committee RUPHA,
P.O. Box 4982-00200 Nairobi, Kenya.

8. COMPOSITION OF THE INTEGRITY PROMOTION COMMITTEE (IPC)

The RUPHA executive committee shall appoint from its membership a chairperson, secretary and members to form its Integrity Promotion Committee.
The management of each RUPHA member facility shall appoint from its staff their respective Integrity Promotion Committee.
The membership of the Integrity Promotion Committee at RUPHA or its member facilities shall consist of not less than three (3) and not more than five (5) members and shall be as outlined below.

- Chairperson
- Secretary
- Member (1-3 in number)

The committee shall determine the procedure of its meetings, provided that the chairperson shall convene all its meetings and the secretary shall keep a proper record of its proceedings. When investigating alleged fraud, the committee may temporarily co-opt an expert as an Ex-officio member. For example, a financial expert where the alleged fraud is financial in nature to help guide its investigations and prepare its reports. The term of office of each IPC shall be three years.

9. CONDUCTING AN INVESTIGATION.

- To establish all the facts around a fraud allegation, all the work of the IPC shall be documented and archived securely this includes transcripts of interviews conducted.
- The investigations of the IPC shall be conducted within the timelines described in clause 6 above.

- A confidentiality clause shall be included as part of all interview notes and any breaches of confidentiality may result in disciplinary action.
- To maintain confidentiality, disclosure of details of the allegation being investigated by the IPC will be appropriate to the situation and to the person being interviewed whilst not misleading the witness in any way.
- Where external expert advice is required, for example, the opinion of a lawyer or a financial consultant, this advice will be summarized in an appendix to the investigation report.

10. INVESTIGATION REPORT

- The investigation report will contain all details relating to the investigation and a timeline of all the events which took place.
- The report will also include the transcripts of any interviews undertaken and any expert advice received will be recorded as an appendix.
- The report may also contain the recommendations of the IPC on the course of action to be taken.
- The Chairperson of the IPC shall submit the report to the chairperson RUPHA or the CEO/MD of the member facility (as the case may be) as per the procedure outline in clause 6.
- Once the report and proposed course of action has been finalized, the person(s) that initially reported the suspected fraud shall be informed in writing by the Chairperson of the IPC of the outcome of the investigation within two weeks of the conclusion of the investigation.

11. SAFEGUARDS FOR EMPLOYEES AND WHISTLEBLOWERS.

- The safety of whistleblowers is a very important consideration for investigators and one that must not be taken lightly. RUPHA and all its member facilities have an obligation to protect staff /stakeholders/members of the public who come forward to report suspected fraud.
- Suspected fraud reported to the IPC of either RUPHA or its member facility or via the RUPHA anti-fraud helpline will be investigated with the following safeguards:
- Harassment or victimization: RUPHA and its member facilities recognize that the decision to report suspected fraud can be a difficult one to make, not least because of the fear of reprisal from those responsible for the malpractice. RUPHA and its member facilities will maintain a zero-tolerance policy against harassment or victimization of whistle blowers and will take all practical steps to protect those who report suspected fraud in good faith.
- Confidentiality: RUPHA and its member facilities will endeavor to protect an individual's identity when he or she reports suspected fraud and does not want their name to be disclosed. It should be understood, however, that an investigation of any malpractice may need to identify the source of the information and a statement by the individual may be required as part of the evidence.
- Anonymous allegations: staff/stakeholders/members of the public may opt to make an anonymous allegation; however, it should be noted that RUPHA and its member facilities discourage anonymous allegations. Suspected fraud expressed anonymously will be considered at the discretion of the IPC of RUPHA or its member facilities as the case may be. In exercising this discretion, the factors to be taken into account will include:
    - The serious nature of the fraud allegations raised.
    - The credibility of the allegations and the supporting facts.
    - The likelihood of confirming the allegation from attributable sources.
- Untrue Allegations: staff/stakeholders/members of the public should be aware that if an allegation is made in good faith, but it is not confirmed by an investigation, RUPHA and its member facilities guarantee that no action will be taken against the complainant. If, however, individuals make malicious or vexatious allegations, disciplinary/legal action will be considered against an individual making the allegation.

12. ACTIONS ARISING FROM FRAUD INVESTIGATIONS

12.1. Disciplinary procedures

Persons in the employ of RUPHA or its member facilities who are found guilty of fraud have committed gross misconduct and will be dealt with in accordance with each institutions policy on disciplinary action.
RUPHA and its member facilities may be required to share details of fraud with external organizations such as institutional donors, regulatory bodies, and future employers. This shall be stated expressly in employment contracts issued by RUPHA and/or its member facilities.
It should be noted that nothing in this Anti-fraud policy bars, RUPHA or its member facilities from referring significant fraud to the local law enforcement agencies with a view to initiating criminal prosecution.

12.2. Change to Internal Control Systems

Where the fraud investigation uncovers a failure of supervision and /or a breakdown or absence of control; the course of action required to improve systems will be documented in the investigation report and implemented by RUPHA or its member facility once the investigation report is submitted to the RUPHA executive committee or management of the member facility as the case may be.

12.3 Recovery of Losses

Where RUPHA or its member facility has suffered a loss due to fraud, full restitution will be sought of any benefit or advantage obtained and the recovery of costs will be sought from the individual(s) or organizations responsible for the loss.
If the individual or organization cannot or will not make good on the loss, consideration will be given to taking civil legal action to recover losses. This is in addition to any criminal proceedings which may result.

13. EFFECTIVE DATE

This Anti-Fraud Policy will come into effect at RUPHA and its member facilities immediately upon its approval by the RUPHA Executive Committee.

14. REVIEW OF THIS POLICY

In the interests of maintaining the best practice, the contents of this Anti-Fraud Policy will be reviewed by the RUPHA Integrity Promotion Committee every three years. In the interim, the Integrity Promotion Committees of RUPHA member facilities may seek the authority of the RUPHA Executive Committee to make adjustments to the policy as may be required to conform to changes in statutory obligations

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