Introduction to Compliance and HIPAA

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Celebrating More Than 80 Years of Caring.

Please Remember

👍 You play an important role in the program's success.

👍 Everyone associated with Broward Health (BH) must comply with all applicable laws, regulations, and compliance standards and policies.

👍 Managers are critical
1. Encourage your people to come forward with questions, issues or potential problems.
2. Take appropriate action including informing the Compliance Officer as appropriate.
3. Communicate, communicate, communicate.

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Integrity is the Rule, Compliance is the Tool!!!

- ⚒ **Compliance** means following the laws, rules and regulations, and policies set by the Federal and State governments.

- ⚒ It also means following the Broward Health Code of Conduct and our policies and procedures.

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Why is Compliance Important at Broward Health?

- It is fundamental to achieving our mission which is to provide outstanding healthcare services to meet our community's needs.

- Our core values require it.

- Laws, rules, regulations and policies are instituted to protect our patients and Broward staff and associates so compliance benefits everyone associated with our institution.

- If you do not follow the rules or ignore dangerous or potentially dangerous situations, you put everyone at risk.

- We owe it to our patients and to each other.

- An effective compliance program fosters a culture of compliance and, at a minimum prevents, detects, and corrects non-compliance.

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THE SEVEN COMPLIANCE PROGRAM ELEMENTS

1. **Written Policies and Code of Conduct**—sets the standards for all of us

2. **Compliance Officer and Compliance Committees**—provides CP oversight

3. **Effective Training and Education**—informs us how the program works and our responsibilities therein

4. **Effective Lines of Communication**—provides avenues to report issues

5. **Enforcement of Well Publicized Standards**—informs us of the consequences of not complying

6. **Effective System for Auditing and Monitoring**—allows for proactive action to identify and resolve issues

7. **Procedures and systems for prompt responses to detected offenses**—describes how we will respond to and report violations

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Reporting Concerns and Violations

- You have a duty to report suspected violations of law, rules and regulations, Code of Conduct, and policies/procedures.

- You are protected from retaliation.

- Failure to report can result in disciplinary action.

- Report to a member of management, or to the Compliance Office.

- We suggest as a last resort, call the Compliance Hotline at **1.888.511.1370**.

☎ The Compliance Hotline is available 24/7/365

☎ Calls are not traced or recorded

☎ You can remain **anonymous if you wish**

☎ Reports are sent directly to Corporate Compliance for investigation

☎ Confidentiality of all reports is strictly maintained.

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Section 2:

Laws, Regulations, High-Risk Areas

Laws and Regulations Focus on Eliminating Fraud, Waste and Abuse

The few slides are dedicated to laws and regulations that prevent fraud.

The Federal government <u>annually</u> spends approximately **one trillion** dollars on healthcare, and it is growing.

Estimates are that 7-10 percent is lost due to fraud, waste and abuse.

That equals $70-100 billion <u>each year</u>.

Key Definitions

Fraud is intentional misrepresenting of facts, lying, or hiding information to get a payment or benefit for yourself or someone else.

Waste is causing unnecessary costs as a result of poor management, practices, systems or controls.

Abuse is excessive or improper use of government resources.

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Federal False Claims Act

💣 **Originally passed in 1863.**

💣 Prohibits billing the government for services not provided, or for services that are not medically necessary.

💣 Falsifying documentation to get paid is also a violation of the False Claims Act.

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False Claims Act Penalties

- Violation can result in criminal and civil penalties.

- Financial penalties may include fines of up to **3X** the amount of damages **plus** up to $23,331 **per** false claim filed.

- Individuals or entities may also face exclusion from federally funded healthcare programs, e.g. Medicare and Medicaid.

- Failure to repay overpayments timely (within 60 days of determination) to Federal payors can result in financial penalties under the False Claims Act.

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Anti-Kickback Statute

Prohibits the knowing and willful payment of "remuneration" to induce or reward patient referrals or the generation of business involving any item or service payable by the Federal health care programs.
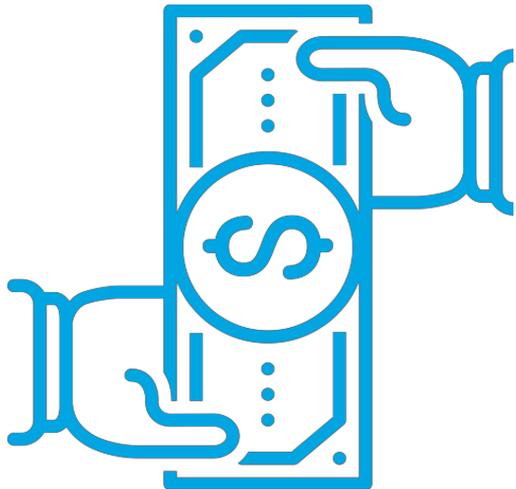
Kickbacks can be:
- Cash/cash equivalent (gift cards, certificates, or vouchers)
- Gifts or any physical item
- Travel, meals, or entertainment
- Access to opportunities or events not normally available
- Free clerical or clinical staff services
- Below fair market value rent
- Excessive compensation for medical directors

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Stark Law

💣 Stark law prohibits physicians from making referrals for **Designated Health Services** where the physician (or immediate family member) has a financial relationship with that entity unless the relationship fits within an exception. Designated Health Services include:

- Clinical laboratory services
- Physical therapy services
- Occupational therapy services
- Outpatient speech-language pathology services
- Radiology and certain other imaging services
- Radiation therapy services and supplies

- Durable medical equipment and supplies
- Parenteral and enteral nutrients, equipment and supplies
- Prosthetics, orthotics and prosthetic devices and supplies
- Home health services
- Outpatient prescription drugs
- Inpatient and outpatient hospital services

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OIG Exclusion Authority

Effect of an Exclusion:

- ☀ **No payment may be made** by any Federal health care program for any items or services <u>furnished</u>, <u>ordered</u>, or <u>prescribed</u> by an excluded individual or entity.

- ☀ The prohibition applies to the excluded person, anyone who employs or contracts with the excluded person, and any hospital or other provider or supplier where the excluded person provides services.

- ☀ The exclusion applies regardless of who submits the claims and also applies to all administrative and management services furnished by the excluded person.

Broward Health Requirements:

- ✓ Will not employ or contract with any excluded individual or entity.

- ✓ We screen all individuals and entities prior to engagement and monthly thereafter.

- ✓ All Covered Persons are required to immediately report if they become a subject of adverse action by a duly authorized government regulatory agency, or if they are convicted of a criminal offense which may lead to exclusion.

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Emergency Medical Treatment and Active Labor Act (EMTALA)

- The intention of EMTALA is to increase patient access to care.
- Any individual who presents at the ER must be screened and treated regardless of the patient's insurance status or ability to pay for the care.
  - ✓ Screen to determine if the patient has an emergency medical condition
  - ✓ If emergency medical condition exists, the hospital must treat the patient to stabilize them
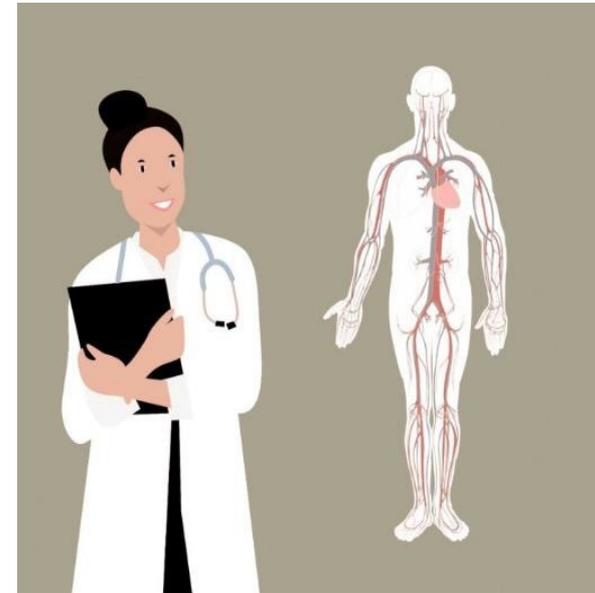
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Physician Reminders—Please…

- Document medical care thoroughly and timely

- Be careful to prevent unauthorized verbal disclosures of PHI

- Follow the Broward Health On-call Policy

- Help promote a safe and comfortable work environment for all

- Disclose all ownership interests or business relationships with outside healthcare entities

- Don't request nurses to enter orders when you are on-site at the facility

- Be familiar with the medical staff by-laws

- Don't access records when you are not involved in the patient's clinical care

- Don't share your username and password with anyone

- Don't store or text patient PHI on your unsecured personal cell phone

Doing all of these things will help mitigate risk.

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21st Century Cures Act

- Focuses on advancing interoperability and limiting data-blocking practices within health IT systems.

- Interoperability means making health data accessible for both patients and providers seamlessly across geographic boundaries.

- Improved interoperability is intended to promote higher quality care and, therefore, better clinical health outcomes.

- Information blocking is any practice that intentionally or unintentionally prevents relevant parties from accessing, exchanging, or using electronic health information.

- Blocking compliance requirements went into effect **April 5, 2021.**

- The Act allows providers **5 exceptions** to the blocking rule—preventing harm; privacy; security; unforeseeable event; IT issues.

- **3 other exceptions** take effect when the patient must complete procedures **prior** to BH fulfilling the request. **Requires supporting written documentation in patient EHR.**

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Section 3:

Health Insurance Portability and Accountability Act (HIPAA)

HIPAA and Protected Health Information (PHI)

All Broward Health employees have a duty to protect our patients' PHI.

- PHI is any information about health status, provision of health care, or payment for health care that is created or collected by a Covered Entity (e.g. BH) and can be linked to a specific individual.

- PHI includes medical records and any other individually identifiable health information in **any form** (written, verbal, or electronic).

Identifier + Health Information = Protected Health Information

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HIPAA Provisions

- HIPAA covers PHI **in all forms** (written, verbal or electronic).

- **HIPAA Privacy Rule:** Gives patients rights over their health information and sets rules and limits on who can look at and receive their health information.

- **HIPAA Security Rule:** Broward Health must protect through administrative and technical safeguards (e.g., passwords), the confidentiality, integrity and availability of electronic PHI (ePHI).

- **Breach Notification Rule:** Requires notification to patients and the DHHS Office of Civil Rights when there is a breach of PHI or ePHI.

Notable Florida State Laws

- **Florida Information Protection Act (FIPA):** Requires notification to the State Attorney General of breaches affecting more than 500 individuals in Florida.

- **Other Florida Privacy Laws:** Protections for Mental Health Records, Substance/Alcohol Abuse Treatment, STD/HIV and Aids Test Results, Records, or Treatment, and Domestic-Violence Related Treatment.

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Patients' HIPAA Rights—Patients May…

1. Ask to see and get a copy of their health records

2. Have corrections added to their health information

3. Receive a notice that tells how health information may be used and shared

4. Decide if they want to give permission before their health information can be used or shared for certain purposes, such as for marketing

5. Get a report on when and why their health information was shared for certain purposes

6. File a complaint with Broward Health or the Office for Civil Rights if they believe their rights are being denied or health information isn't being protected

*Note: Patient authorization is **not required** if information is used for treatment, payment or healthcare operations. Questions about patient authorization requirements should be directed to the Compliance Office.*

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Minimum Necessary Standards

- Everyone in the Broward Health workforce must ensure that only the minimum amount of health information is **used or disclosed** to accomplish the specific purpose of the job or task.

- **You** are responsible for knowing minimum necessary.

- If you are not sure, **ASK**.

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Disclosure of PHI to Patient Representatives

- Copies of PHI may, upon written request, be provided to a patient representative, after identity and authority verification.

- A patient representative has the same right as the patient to access or receive the patient's PHI, except when limited by the patient or by applicable law and regulation.

- Contact your regional HIM Department for the protocol to verify authority of a patient's representative when it has not been documented in a patient consent form.

- For ambulatory sites and physician practices, contact the site/office manager, Medical Records Supervisor, or designee for the protocol to verify authority of a patient's representative when it has not been documented in a patient consent form.

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HIPAA Breach of PHI

- A HIPAA breach is the unauthorized acquisition, access, use, or disclosure of PHI.

- Every unauthorized disclosure or release of PHI must be reported **immediately** to the Compliance Office by calling 954-473-7500.

- This includes vendors or third parties handling BH patient PHI.

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Tips for Protecting Patient Privacy

- Store patient medical records in a secure location (file cabinets, closed charts, charts turned over on your desk) that can only be accessed by employees with a **need to know.**

- Use **reasonable precautions** when communicating with patients or accounts through the mail, email, by fax or by phone to avoid unauthorized or unpermitted disclosure of PHI.

- User searches and activity are tracked & audited in all databases containing PHI.

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PHI and Broward Health Employees and Workforce Members

- Broward Health employees and workforce members may seek treatment at Broward Health facilities.

- **NO SNOOPING!**

- If you have been a patient at Broward Health, **do not search for or open your own, a family member's, or a friend's or colleague's medical records – even if they request it.**

- **Sign up for the patient portal!**

- Unauthorized or inappropriate searches or access of patient information is a violation of federal and state law. Consequences can be serious!

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Protecting Patient Privacy – Inappropriate Access

Is the following a HIPAA violation?

A patient who is also an employee of Broward Health is brought in by EMS. Jane, a nurse is working in the ER that night. Jane is a coworker of the patient but not the nurse assigned to the patient. She is concerned so she goes into the medical records to see why her colleague was brought in.

Of course, it is a violation! Jane is not involved in the patient's treatment and does not have authorization, or a valid business need to access the medical record. She may be subject to disciplinary action up to and including termination.

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More Tips for Safeguarding PHI

1. Comply with the Broward Password Policy.
2. Don't leave computer logged on if away from your desk or station.
3. Keep computer screen turned away from view by others.
4. Search for or access patient information only if required for work duties.
5. Never disclose your computer username or password. **<u>You</u>** are responsible for activity conducted under your username.
6. Don't open or click on links or attachments from people or entities you do not know.
7. Do not try to apply a virus fix described in an email. Contact IT.
8. Do not store PHI on a personal device.

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Tips cont'd

9. Don't email PHI that is not encrypted to anyone outside of Broward. **To encrypt, be sure to type "Confidential" in the subject line of the email.**

10. Use only Broward Health email accounts for patient or business communications.

11. Always lock and secure Broward Health equipment and devices.

12. Do not discuss patient PHI in common areas.

13. Avoid using Social Media websites while at work.

14. Don't take pictures of patients.

15. Don't send emails containing PHI to your personal email account.

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