



NORTH BROWARD HOSPITAL DISTRICT
BOARD OF COMMISSIONERS
COMPLIANCE COMMITTEE MEETING
1700 NW 49th Street, Ste. 150
Fort Lauderdale, FL
OCTOBER 25, 2017

***MINUTES**

MEETING CALLED TO ORDER: 2:05 pm

COMMITTEE MEMBERS:

- √ Commissioner Robison, Chair
- √ Commissioner Ure
- √ Commissioner Wellins
- √ Commissioner Klein
- √ Commissioner Rodriguez

PUBLIC COMMENTS: No public comments

AUTHENTICATION OF MINUTES:

1. Request approval of the Minutes from Compliance Committee Meeting held on June 9, 2017

MOTION:

Motion was made by Commissioner Rodriguez to approve the Meeting Minutes from Compliance Committee Meeting held on June 9, 2017. The motion was seconded by Commissioner Ure.

Motion carried unanimously.

REPORTABLE EVENTS – Nicholas Hartfield, Chief Compliance Officer and Lynn Barrett, General Counsel

Mr. Hartfield elected to give General Counsel the floor.

Ms. Barrett reminded the Board that Compliance and Legal provide periodic training to BH employees on issues such as the Stark Law and Anti-Kickback Statute. In 2010, A NP, PA and ARNP were the allied health professionals referred to under this term. An ARNP was assigned to a hospital based practice although the allied health professional was not within the category of personnel contemplated in the contract. It was determined the provision of this individuals' service to the hospital based practice constitutes a probable violation of the Stark Law and as a result BH will need to disclose to CMS under the Stark Self-Referral Disclosure Protocol. It was also determined this was a Reportable Event under our CIA.

In addition, Ms. Barrett reported that earlier this year the Legal Department discovered that from approximately the middle of 2014 to the very beginning of 2015 an employed physician was compensated an amount that could not be confirmed as being in compliance with the FMV requirement of the employment exception under the Stark Law. As a result BH will need to disclose this to CMS under the Stark Self-Referral Disclosure Protocol and this is also a Reportable Event under the CIA. Legal and Compliance are currently evaluating additional prior physician employment agreements. Ms. Barrett opened the floor for questions and introduced Jack Selden, a partner in the Government Enforcement Investigation Litigation Health Care Groups at Bradley Arendt.

Mr. Selden spoke briefly about the basic restrictions of the Stark Law, which prohibits a physician from making referrals for certain designated health services payable by Medicare to an entity that the physician has a financial relationship unless there is an exception which applies. The Stark Laws and Administrative Laws go on to provide a number of exceptions. Designated Health Services is the defined term that includes inpatient, outpatient hospital services, imaging services, durable medical equipment and supplies and outpatient prescription drugs. If an arrangement is implicated by the Stark Law but the elements of that applicable exception are met, then it is not a violation of Stark. One of the those exceptions relates to bonafide employment relationships; the element of that exception with the employed physician at issue here is based on the FMV of the physician services provided that exception requires the amount paid by the employer to the employed physician must be consistent with the FMV of the services provided, there are some of requirements as well but they are not in play, the focus is really on the FMV evaluation.

In regards to the second issue, Mr. Selden explained the provision that the allied health professional form of remuneration to referring physicians has no Stark exception as Ms. Barrett's reference work is currently being done to calculate the amount of any overpayments which may have resulted from these probable violations. In August of 2015 the district entered into a settlement agreement under the Federal False Claims Act that resulted in a 5 year Corporate Integrity Agreement (CIA) as part of that agreement the CIA is being monitored by the OIG. The CIA requires that if the district determines there is a reportable event then North Broward Hospital District shall notify the OIG in writing within 30 days after making the determination the reportable event exists. The CIA provides for what should be included in the written report to the OIG when there is a finding of a probable violation. There is an exception in the CIA in terms of reporting that relates to reportable events involving Stark Laws; of that provision in Section 3.K.7 of page 22 provides that any reportable event involving only a probable violation of the Stark Law should be submitted by North Broward Hospital District to CMS through the Self-Referral Disclosure Protocol or SRDP with a copy provided to the OIG. The failure of the district to report a reportable event is required in the CIA whether it is a SRDP to CMS with a copy to the OIG or a separate written report not involving a Stark violation only to the OIG constitutes a material breach of the CIA. As a reminder of the CIA that agreement between the district and the OIG further provides that the district agrees a material breach of

the CIA by the district constitutes an independent basis for its exclusion from participation in the Federal Healthcare Programs and it goes on to provide the basis for various stipulated monetary penalties. There are three forms the SRDP uses for disclosure submission. Work is currently being done on the quantification of any overpayments received as a result of the probable Stark violations discussed as well as drafting of the written SRDP to CMS.

Ms. Barrett explained to the Board that in regards to updates none were done in 2014 and that in 2015 there was only one. She went on to report that the physician is still employed. It came across that this might be a problem due to not finding evidence of Fair Market Value (FMV) for the time period contemporaneous with the arrangement. Ms. Barrett further explained that the contract in question was terminated in the beginning of 2015. When current FMV was evaluated, which was post CIA, Legal and Compliance ensured that all new contracts be substantially revised to have extremely robust FMV and CR opinions.

Mr. Hartfield reported that in regards to the Allied Health professional at BHN, the employee is no longer providing services to the hospital based group. This came up in one of the compliance trainings and was reported to senior staff. Mr. Hartfield believes the trainings are working in making people aware of all the potential issues out there. Compliance has undertaken a review of all employed Allied Health professionals, not just in clinical roles, but in administrative roles as well. Compliance has implemented policy and procedure of the Physician Financial Review Appraisal Tracking and Remuneration policy to promote compliance with the requirements of the Stark Law, which was updated recently to reflect current practices with the implementation of Compliance 360. Beverly Capasso has hired a new Vice President of Physician Services to oversee the physician services practice. She has 19 years of experience at the Cleveland Clinic managing. All prior employment agreements are being evaluated to assess compensation to employed physicians.

Commissioner Robison and Commissioner Ure shared their concern in regards to submitting the Stark self-disclosures prematurely yet putting an emphasis on filing on time.

MOTION:

Motion was made by Commissioner Ure to recommend to the board the authorization of the submission of the SRDPs and the reporting to the OIG. The motion was seconded by Commissioner Rodriguez.

Motion carried unanimously.

Commissioner Klein thanked General Counsel and Mr. Hartfield for bringing the matter to the Boards attention. He expressed that although the past history cannot be changed, going forward it is important that they stay compliant and make sure past transgressions do not continue to go on. It is a prudent course of action that the Board go forward with the self-disclosure.

On-Call Policy – Nicholas Hartfield, Interim VP CCO

Mr. Hartfield reported that there were several meetings that included Ms. Capasso, Mr. Santorio, Dr. Westphal, the hospital CEOs, RMOs and management from medical staff offices of each region. There were several revisions and drafts of the policy and the final draft will be taken to Joint Conference Committee on Oct. 26, 2017 for discussion with medical staff. Next the policy will either be brought to the

Compliance Committee for review and recommendation for approval to the Board or directly to the Board of Commissioner's Meeting, whichever occurs first.

Annual Report Update – Nicholas Hartfield, Interim VP CCO

Mr. Hartfield reported that due to the hurricane in September 2017 two weeks were lost after the end of the reporting period. He contacted the OIG monitor and requested a 30 day extension from the original due date of Nov. 3, 2017. The extension was granted and the new due date is December 4, 2017, by end of the day. Within the CIA there are 24 areas that are required to be in the Annual Report. Mr. Hartfield had a phone conference with the Monitor over what her expectations of the Annual Report were and there are an additional 12 sections that need to be provided to the Annual Report, totaling to 36 sections of information. Some of the additional items not listed in the original CIA are a copy of the Ethics and Compliance Disclosure Logs, a new Corporate ORG Chart, an update on the resolution of timeshare leases, certifying employee findings on each exception, all last year's annual certifications, an explanation on how each one of the exceptions are being addressed, progress in addressing each recommendation BH accepted from the IRO report from last year, determination on each recommendation BH was considering from the IRO Report, a resolution and a summary to the medical dictatorship assessment completed by Dr. Westphal as Chief Medical Officer, information regarding the assessment of leases with actual referral sources and a description of how investigations of issues through the disclosure program are being handled. In addition, the Monitor requested a current list of the Compliance Committee members and a current list of the Certifying Employees and list of arrangements that were executed without focus arrangement language. All BH departments responsible for the reports have already started drafting reports and working together. Mr. Hartfield hopes that by mid-November a draft report will be ready for the Board to review. Mr. Hartfield plans on following the same process as last year where anyone that provides input to the report would sign a statement of accuracy for what they are reporting that will be included with the report.

Executive Compliance Workgroup – Nicholas Hartfield, Interim VP CCO

Mr. Hartfield wanted to make the Board aware of the Executive Compliance Workgroup that is required to meet on a monthly. Membership includes President CEO, General Counsel, CFO, COO, CMO of the system, Sr. VP Chief Information Officer, Chief of HR, Chief Internal Auditor, Designated Institutional Officer, Chief Ethics Officer, Administrative Director of the Central Business Office, Director of Risk Mgmt., Director of Physician Business Operations, VP of Physician Services, all Regional CEOs, Heads of CDTC and CHS, Corporate Procurement Officer, Director of Health Plan Administration, Director of Payroll and Manager of Accounts Payable. The topic of risk was discussed in August, which brought a concern about Policy Stat and another application called My Policies. Mr. Hartfield was told that Policy Stat had size limitation which restricts using one system. After speaking with a Policy Stat administrator, Mr. Hartfield was told the information of needing two systems was inaccurate. Mr. Hartfield decided to take ownership of all corporate policies at BH along with Alice Taylor, CEO of BHIP, who is taking ownership of all hospital policies. All policies will be migrated into one database, Policy Stat. He further stated that he and Ms. Taylor are going to put together a plan of action of how to review all policy in regards to those that have duplication, inconsistencies, or are outdated. He feels that the concerns that emerged out of the executive compliance discussion brought this issue to the forefront of what needs to be tackled.

The IRO will be submitting a transaction report by looking at 50 focus arrangements in various categories to ensure that the policies and procedures comply with the CIA in regards to these 50 sampling contracts. We will be getting that report and that is the only report I am aware we will be getting other than the letter you described here and there.

OIG Communication: – Nicholas Hartfield, Interim VP CCO

Mr. Hartfield stated that he would report all OIG communication and correspondence sent to and from the Monitor to the Committee. Since the last Compliance Committee in June, there was one notifying the Monitor of one substantial overpayment which was for approximately \$97,000. It was based on a federal contractor audit that involved two claims; one billed Medicaid as primary and the patient later qualified for Medicare, which makes Medicare primary. The Medicaid money was returned. There were multiple changes to the Executive Compliance Workgroup, in which Mr. Hartfield is required to report within 15 days of any changes in the composition of the Executive Compliance Workgroup. Also within 15 days he is required to report changes to the composition of the Board of Commissioners, since last June Commissioner Wellins' reappointment and the appointment of Commissioner Klein was reported to the OIG. Each month he provides Ms. Ellis a list of any HIPAA breaches. September was the first time he had no breaches to report since his commencement as Interim Chief Compliance Officer. He credits the new Senior Compliance Privacy Specialist for all the training she has done.

Selection Process for Permanent Chief Compliance Officer: – Peter Nyamora, EVP CHRO

Mr. Nyamora reported that 11 of the 13 applicants received were still interest in the opportunity. He asked the Board to review the candidates and select their preferred 3.

There was discussion between the Commissioners in whether they should incorporate announcement of their recommendations at the Regular Board Meeting or wait until the next Compliance meeting. It was confirmed that Commissioner Wellins could attend the Board meeting remotely, so the recommendation would be made there.

Interim Chief Compliance Officer Salary: – Peter Nyamora, EVP CHRO

Commissioner Robison expressed what a stellar job Mr. Hartfield, Interim Compliance Officer, has done. She feels that regardless of what the process is going forward with a permanent Compliance Officer, she would ask the Mr. Nyamora do right by Mr. Hartfield in regards to putting together some parameters so a recommendation could be made to improve his situation.

Mr. Nyamora reported that his team did an FMV of this particular position and found that the 50th percentile for the salary of this role is \$214,958 not inclusive of bonus, just base.

Commissioner Ure believes it is important to demonstrate to staff as a whole that when you step up and perform admirably, you are rewarded.

The Commissioners discussed with Mr. Nyamora and Ms. Barrett the policy of increasing the salary of those that report to the Board directly.

Commissioner Klein echoed Commissioner Ure's opinion in that compliance is one of BH's most important items, and that they want to reward the people delivering quality services as the CCO. He further expressed that they need to make sure when new people are recruited they are offered a salary that is competitive and rewarding in this challenging environment.

MOTION:

Motion was made by Commissioner Ure to recommend to the Board that the Interim Chief Compliance Officer salary be set at \$238k, retroactive to last November 2016 or the date of acceptance to the new position.

Commissioner Klein amended the motion to make an exception to any applicable policy to allow this salary to be at the level that is being proposed. Amended motion was seconded by Commissioner Ure.

Motion as amended, carried unanimously.

MEETING ADJOURNMENT: 3:42 pm

AUTHENTICATION OF MINUTES: Patricia Alfaro, Special Assistant to the Executive Office.

*Audiotape available upon request.