

# NOTICE OF MEETING

## **NORTH BROWARD HOSPITAL DISTRICT**

### **BOARD OF COMMISSIONERS**

A Compliance and Ethics Committee meeting will be held on Wednesday, January 20, 2021, immediately following the Legal Affairs and Governmental Relations Committee meeting, at the Broward Health Corporate Spectrum Location: 1700 Northwest 49 Street, Suite 150, Fort Lauderdale, Florida, 33309. The purpose of this committee meeting is to review and consider any matters within the committee's jurisdiction.

Persons with disabilities requiring special accommodations in order to participate should contact the District by calling 954-473-7481 at least 48 hours in advance of the meeting to request such accommodations.

Any person who decides to appeal any decision of the District's Board with respect to any matter considered at these meetings will need a record of the proceedings, and for such purpose, may need to ensure that a verbatim record of the proceedings is made which record includes testimony and evidence upon which the appeal is to be based.

North Broward Hospital District Board of Commissioners  
1700 Northwest 49th Street, Suite #150, Ft. Lauderdale, FL 33309

## COMPLIANCE AND ETHICS COMMITTEE MEETING Immediately Following the Legal Affairs & Governmental Relations Committee Meeting Wednesday, December 16, 2020

The Compliance and Ethics Committee of the North Broward Hospital District was held on December 16, 2020, immediately following the Legal Affairs & Governmental Relations Committee Meeting, at the Broward Health Corporate Spectrum Location, 1700 NW 49<sup>th</sup> Street, Suite 150, Fort Lauderdale, Florida 33309.

### 1. NOTICE

Official notice and agenda of this meeting is attached to the minutes, as EXHIBIT I and EXHIBIT II, as presented for consideration of the Committee.

### 2. CALL TO ORDER

There being a quorum present, the meeting was called to order by Chair Nancy W. Gregoire at 1:32 p.m.

### 3. COMMITTEE MEMBERS

*Present:*

Commissioner Stacy L. Angier,  
Commissioner Ray T. Berry, Vice Chair  
Commissioner Nancy W. Gregoire, Chair

*Not Present:*

Commissioner Marie C. Waugh,

*Senior Leadership*

*Additionally Present:*

Gino Santorio, President/Chief Executive Officer  
Alan Goldsmith, Chief Operating Officer  
Alex Fernandez, Chief Financial Officer  
Linda Epstein, Corporate General Counsel  
Jerry Del Amo, Deputy General Counsel

### 4. PUBLIC COMMENTS

Chair Angier opened the floor for public comments, in which there were none.

### 5. APPROVAL OF MINUTES

Without objection, Chair Gregoire approved the minutes, dated November 18, 2020.

Motion *carried* without dissent.

**6. TOPIC OF DISCUSSION**

- 6.1. Chief Compliance Officer Report (Presenter – Brian Kozik, Chief Compliance and Privacy Officer)
- 6.1.1. Compliance Department Updates
- Two-Year Work Plan
    - 55 reviews scheduled: 22 for FY21 and 23 for FY22.
      - FY21.
        - 4 audits completed.
        - 7 audits in-process.
        - 11 audits pending.
  - BHIP Coding Audit for FY20
    - In process.
    - Objective is to review inpatient and outpatient coding to ensure it meets federal coding guidelines and Broward Health’s accuracy rate of 95%.
  - Coding Review for stroke patients who underwent a mechanical thrombectomy (“coiling”) or received intravenous thrombolysis (IV) tissue-type plasminogen activator (tPA)
    - In process.
    - Objective is to ensure the coding was accurate for patients that underwent a mechanical thrombectomy.
  - Tracking and Remuneration Audit for Employed Physician Agreements
    - In process.
    - Objective is to examine payments made during the review period and verify internal controls were effective and consistent with terms of agreement.
  - Clinical Trials – Broward Health Medical Center’s Institutional Review Board (IRB)
    - In process.
    - Objective is to determine if BHMC’s Institutional Review Board is following the requirements under:
      - Code of Federal Regulations, subchapter part 56 Institutional Review Boards.
      - Centers for Medicare and Medicaid Services regulations.
      - Guidelines regarding the operations of an IRB.
  - BHMC Coding Audit for FY20
    - In process.

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- Objective is to review inpatient and outpatient coding to ensure it meets federal coding guidelines and Broward Health's accuracy rate of 95%.
- Focus Arrangements Review for CIA Year 5, Q3 and Q4
  - In process.
  - Objective is to ensure internal review and approval processes and procedures were properly followed.
  - Audit period: March 1, 2020 through August 31, 2020.
- Tracking and Remuneration for Community Care Partners
  - In process.
- Centers for Medicare and Medicaid Services (CMS) Audit of 20% Bonus for COVID-19 Inpatient Waivers
  - In process.
  - Objective is to complete CMS's first medical review of the 20% add-on payment for treating COVID-19 inpatient waivers.
  - Proactive steps: Health Information Management (HIM) directors to determine if Broward Health would pass an audit today. Each HIM director is auditing 25 cases for the period of April 1, 2020 through August 30, 2020 to ensure all guidelines were followed.
  - CMS provided a checklist that their auditors are using as a proactive measure.
- Forensic Audit Analysis of Vendor, Employee, Dependent, Physician and Beneficiary Master Files
  - Completed.
  - Objective is to compare information from data mining as well as a comparative approach in order to identify unusual relationships in and amongst the data.
  - In conjunction with the Finance Department, Broward Health engaged Palmar Forensics (PF) to perform a forensic audit analysis.
  - Involves a comparison of information from data mining as well as a comparative approach in order to identify unusual relationships in and amongst the data.
  - No fraudulent activity found.
  - Process improvement opportunities identified within the following areas:
    - Existing information technology, policies, and procedures.
    - Operational and/or financial processes.
  - 22,000 vendors in master file reduced to less than 10,000.
- SafeGuard Services Audit of Broward Health Medical Center Short Stay
  - Completed.

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- Objective is to determine whether Medicaid payments made for inpatient stays less than two days were in accordance with state and federal laws, regulations, and policies between October 1, 2014 through March 31, 2018.
- Medical Center contested 35 of 36 accounts.
- Auditor has submitted documentation to Centers for Medicare and Medicaid Services (CMS), and the Final Findings Report is pending.
  
- HIPAA Breaches for November
  - Impermissible disclosures of patient health information (PHI).
    - (1) BHMC.
  
- 340B Program External On-Site Audit
  - In progress.
  - Objective is to provide external audit documentation as required by the Health Resources and Services Administration (HRSA) auditor for integrity of the program. All sites are required to have an external audit of each 340B registered location.
  - Audit Kickoff Meeting held on December 1, 2020.
  - Audit Focus.
    - Hospitality eligibility.
    - Internal controls.
    - Duplicate accounts.
    - Diversion (transactional testing).
  
- Other Department Activities
  - New Compliance Council.
    - First meeting held on December 7, 2020.
    - Twenty-seven attendees representing all areas within Broward Health, clinical and non-clinical, as well as an internal medicine physician.
    - The meeting consisted of introductions and background information.
    - Next meeting scheduled for January 2021.

#### 6.1.2. OIG/Fifth Annual Report Update

- Annual report completed and sent to the OIG on December 15, 2020.
- Report includes results of the IRO transaction review.
- Report to be uploaded to the OIG website.
- Mr. Kozik thanked the annual team.

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- 6.2. Audit and Compliance Department Structure (Presenter – Steve Forman, Board of Commissioners Compliance Consultant)

Due to time constraints, Mr. Forman did not present Item 6.2, and instead presented Item 6.3.

- 6.3. Compliance Education (Presenter – Steve Forman, Board of Commissioners Compliance Consultant)

Mr. Foreman gave an overview of an article by McDermott, Will and Emery entitled, *Key 2020 Corporate Governance Corporate Developments Affecting Healthcare Boards*. The article covered developments in several areas, including board engagement, compliance oversight, workforce culture, diversity, and conflicts of interest.

## 7. **ADJOURNMENT**

There being no further business on the agenda, the Chair adjourned the meeting at 1:54 p.m.

Respectfully submitted,

Commissioner Marie C. Waugh, Secretary/Treasurer

DRAFT

# North Broward Hospital District Board of Commissioners Compliance Education

Brian W. Kozik, CHC, CHPC, CCEP  
SVP, Chief Compliance & Privacy Officer

January 20, 2021



**BROWARD HEALTH**<sup>®</sup>

Corporate Compliance  
& Ethics Department

# COMPLIANCE & ETHICS COMMITTEE

## Healthcare Regulatory Environment

### Outlook for 2021





# OUTLOOK FOR 2021

The COVID-19 pandemic will continue to set the agenda in compliance and enforcement in 2021.

There will be increasing reliance on data analytics as a source of investigations. Data analytics can be used to identify relationships among providers and between physicians and pharmaceutical and medical device manufacturers and labs, which may surface improper payments.

Anti-Kickback Statute enforcement will continue to be important. Although CMS and OIG finalized new Stark and safe harbor regulations, respectively, that are intended to ease regulatory burdens and foster innovation.



# OUTLOOK FOR 2021

Attorneys predict a big year for kickback related cases. One target: physicians who accept prohibited remuneration for participating in speaker programs and the drug and device manufacturers who dole out the money.

The DOJ has several False Claims Act enforcement priorities related to EHR vendors, alleging their software didn't qualify for the Medicare EHR incentive payment program and therefore caused their hospital clients to collect millions of dollars improperly.



# OUTLOOK FOR 2021

Practice Fusion, a health information technology developer, agreed to pay \$145 million to end civil and criminal investigations of kickbacks from a pharmaceutical manufacturer; investigation involved allegations it was certified for the Medicare-Medicaid EHR incentive payment program under false pretenses.

Opioid enforcement will continue. On December 22, 2020, DOJ announced it filed a nationwide civil lawsuit against Walmart for allegedly unlawfully dispensing controlled substances from its pharmacies in violation of the Controlled Substance Act.

# OUTLOOK FOR 2021

In terms of HIPAA enforcement hospitals and physicians and other covered entities should expect more cases for allegedly violating a patient's right to access their records.

In December, OCR settled the 13<sup>th</sup> investigation under its HIPAA Right to Access Initiative for \$36,000. “In order to get the OCR’s message across – *provide patients with their records timely or face the repercussions* – OCR appears to be investigating each allegation of a provider impeding a patient’s right to their medical information.



# OUTLOOK FOR 2021

This year will also test the competence of compliance officers, said former federal prosecutor Robert Trusiak, an attorney in New York. The Board should be made aware if the compliance team is doing less, he stated. “A missed physician contract or lease is often the product of staffing changes”, he noted.

Telehealth will also come under greater scrutiny. The OIG has added to its Work Plan an evaluation of program integrity risks of telehealth services provided during the pandemic.



# OUTLOOK FOR 2021

Cybersecurity, Emergency Preparedness will be magnified this year because hackers continue ransomware attacks, where they encrypt data and demand payment in exchange for decryption.

Shannon Summer, principal and Chief Compliance Officer with PYA, has seen her firm receiving more requests for enterprise risk assessments, which are more broad than compliance risk assessments. “Some organizations are doing more tabletop exercises, evaluating, for example, whether they could recover from an information technology disaster.”



# OUTLOOK FOR 2021

Another big challenge for hospitals this year: Price transparency requirements took effect on January 1<sup>st</sup>. Hospitals are now required to post machine-readable files with standard charges for all hospital services and publish a consumer-friendly document listing prices for 300 shoppable services. CMS said it will audit a sample of hospitals for noncompliance.

Evaluation & Management – changes to documentation guidelines and payment increases for primary care physicians and nonprocedural specialists.

# OUTLOOK FOR 2021

Physicians and other clinicians now base their evaluation & management levels of service for office/outpatient visits on the documentation of time or medical decision-making only. Medical decision-making is based on new guidelines developed by the American Medical Association.

Although there will be new leadership at the Department of Justice and HHS, prosecutors and other attorneys say they have a good feel for what health enforcement will look like in 2021. “There will be vigorous enforcement across the board”, predicts Washington, D.C. attorney Collete Matzzie.

