



Origination: 06/2020
Effective: 06/2020
Last Reviewed: 06/2020
Last Revised: 06/2020
Next Review: 06/2021
Sponsor: Brian Kozik: SVP, COMPLIANCE & PRIVACY
Section: GA-Corporate Compliance
Manuals:

GA-004-007 Compliance with Federal Anti-Kickback Statute and Stark Law

I. Purpose

Broward Health is committed to compliance with the various laws, rules, and regulations relating to compensation arrangements with referral sources, including, but not limited to, the Anti-Kickback Statute and Stark Law. The purpose of this policy is to provide direction to Broward Health workforce members for entering into arrangements with Referral Sources.

II. Key Terms

Anti-Kickback Statute or "AKS": A law that prohibits the knowing and willful payment, solicitation, or receipt 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 (including Medicare and Medicaid). The Anti-Kickback Statute is set forth in 42 U.S.C. § 1320a-7b(b).

Designated Health Services: Means the health items and services defined in 42 USC §1395nn(h)(6).

Financial Relationship: Means an ownership or investment interest, or a compensation arrangement, as set forth in 42 USC §1395nn(a)(2).

Immediate Family Member: as defined at 42 C.F.R. § 411.351, it means husband or wife; birth or adoptive parent, child, or sibling; stepparent, stepchild, stepbrother, or stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; grandparent or grandchild; and spouse of a grandparent or grandchild.

Overpayment: An overpayment is the amount of funds Broward Health has received in excess of the amount due and payable under any Federal health care program requirements. An overpayment may be the result of non-adherence to Federal health care program requirements, errors by a Broward Health workforce member, payment processing errors by the payer, or erroneous or incomplete information provided to Broward Health by the patient or responsible party.

Referral: Means, generally, the request by a physician for, or ordering of, any Designated Health Service for which payment may be made by a federal or state health care program. The full definition is set forth

in 42 C.F.R. § 411.351.

Referral Source: Any actual source of health care business or Referrals to Broward Health which involves, directly or indirectly, the offer, payment, or provision of anything of value; or is between Broward Health and any physician (or a physician's Immediate Family Member) who makes a referral (as defined at 42 U.S.C. § 1395nn(h)(5)) to Broward Health for designated health services (as defined at 42 U.S.C § 1395nn(h)(6)).

Remuneration: Anything of value, including, but not limited to, cash, items, or services.

Reportable Event: Anything that involves: (a) a Substantial Overpayment; (b) a matter that a reasonable person would consider a probable violation of criminal, civil, or administrative laws applicable to any Federal or State Health Care Program for which penalties or exclusion may be authorized; (c) the employment of or contracting with an Ineligible Person; or (d) the filing of a bankruptcy petition. A Reportable Event may be the result of an isolated event or a series of occurrences.

Stark Law: A set of federal laws and regulations that prohibit a physician from referring Medicare patients for Designated Health Services to an entity with which the physician (or immediate family member) has a financial relationship, unless an exception applies; the laws and regulations further prohibit the Designated Health Services entity from submitting claims to Medicare for services resulting from a prohibited referral. The laws and regulations are codified at 42 U.S.C. § 1395nn (the statute) and in 42 C.F.R. 411.350, et seq. (the implementing regulations).

Substantial Overpayment: Any Overpayment of \$25,000 or more.

III. Policy

1. All Workforce Members are required to comply with the Anti-Kickback Statute and Stark Law.
2. Broward Health does not offer, pay, provide, or accept any remuneration, including any payment of any type, for patient Referrals. Broward Health is committed to ensuring that its relationships with physicians and other Referral Sources do not violate the Anti-Kickback Statute, the Stark Law, or any other applicable federal or state laws.
3. Broward Health has established a Code of Conduct and policies and procedures which prohibit fraud, kickbacks, bribes, or any kind of Remuneration or benefits intended to induce patient Referrals.
4. Broward Health will maintain a centralized tracking system of all contractual relationships with Referral Sources.
5. Every agreement with potential referral sources will be specifically reviewed and approved by the Corporate Compliance Department and the Office of the General Counsel pursuant to Physician and Non-Physician Financial Arrangement Approval, Tracking, and Monitoring, Policy No. GA-004-441.
6. Any known or suspected violation of the AKS and/or Stark Law must be reported, investigated, and remediated in accordance with Duty to Report, Policy No. GA-004-004 and Compliance Investigations, Policy No. GA-004-008.

IV. Procedures

1. Broward Health will develop various policies and procedures that will govern Financial Relationships between Broward Health entities and a Referral Source. Compliance with these policies is required in any agreement with a Referral Source, unless otherwise granted an exception by the Corporate Compliance Department and Executive Administration in consultation with the Office of the General Counsel. Any proposed exceptions should be discussed with the Chief Compliance Officer (CCO) or designee prior to any formal or informal commitment.
2. All agreements with a Referral Sources will be in writing. Broward Health will not enter into side agreements with Referral Source unless there is documented approval by the Office of the General Counsel and the Corporate Compliance Department. In addition, this policy applies to all amendments, auto renewals, and extensions/renewals of agreements involving referrals.
3. All agreements with a Referral Source must receive all required approvals in accordance with Review, Approval, and Administration of Contracts, Policy No. GA-001-020 prior to becoming effective.
4. If any Workforce Member is in doubt as to whether a potential or current arrangement or course of action violates this policy, they shall seek guidance from the CCO.
5. The CCO shall report the results of any report as required by the Investigations policy to the Office of the General Counsel, Executive Leadership, and the Executive Compliance Group (ECG), as necessary and in accordance with Compliance Investigations, Policy No. GA-004-008.
6. If at any time, Broward Health identifies an Overpayment, Broward Health shall take steps to repay the appropriate payor in accordance with Overpayments, Policy No. GA-004-493.
7. If, after a reasonable opportunity to conduct an appropriate review or investigation of an activity that may violate the AKS or the Stark Law Broward Health determines that there is a Reportable Event, the CCO shall notify the Office of the Inspector General (OIG) of the Reportable Event in accordance with Actions and Events Reportable to the OIG under the Corporate Integrity Agreement, Policy No. GA-004-006.
8. Notwithstanding the reporting requirements outlined in this Policy, any activity that is determined to be in violation of AKS or the Stark Law will be reported to the appropriate governmental authorities in accordance with Compliance Investigations, Policy No. GA-004-008.

V. Related Policies and Compliance Documents

- Actions and Events Reportable to the OIG under the Corporate Integrity Agreement (CIA), Policy No. GA-004-006.
- Compliance Investigations, Policy No. GA-004-008
- Duty to Report, Policy No. GA-004-004
- Gifts, Gratuities, and Business Courtesies, Policy No. GA-004-012
- Overpayments, Policy No. GA-004-493
- Physician and Non-Physician Financial Arrangement Review, Approval, Tracking and Monitoring, Policy No. GA-004-441
- Review, Approval, and Administration of Contracts, Policy No. GA-001-020

VI. References

Fl. Stat. § 817.505

Department of Health and Human Services Office of Inspector General. Publication of the OIG Compliance Program Guidance for Hospitals. 63 Fed. Reg. 35, 8987 (Feb. 23, 1998).
<http://oig.hhs.gov/authorities/docs/cpghosp.pdf>

Department of Health and Human Services Office of Inspector General. OIG Supplemental Compliance Guidance for Hospitals. 70 Fed. Reg. 4858, 4865 (Jan. 31, 2005).
<http://oig.hhs.gov/fraud/docs/complianceguidance/012705HospSupplementalGuidance.pdf>

United States Sentencing Commission. Guidelines Manual. United States Sentencing Commission. Guidelines Manual. <https://www.ussc.gov/guidelines/2018-guidelines-manual>

US Code of Federal Regulations § 483.85 - Compliance and ethics program. https://www.govregs.com/regulations/title42_chapterIV_part483_subpartB_section483.85

Broward Health Corporate Integrity Agreement with the DHHS Office of Inspector General, dated August 20, 2015

Attachments

[Anti-Kickback Statute and Stark Law Comparison Chart](#)

Approval Signatures

Step Description	Approver	Date
Final Approver	Brian Kozik: SVP, COMPLIANCE & PRIVACY	06/2020
	Jennifer Mosley: EXEC SECRETARY/ANALYST	06/2020