COMPLIANCE CONNECTION

APRIL 2022

This newsletter is prepared by the Midland Health Compliance Department and is intended to provide relevant compliance issues and hot topics.

IN THIS ISSUE

DID YOU KNOW...

FRAUD & ABUSE LAWS EXAMPLES

The five most important Federal Fraud and Abuse Laws that apply to physicians are:

1. ***False Claims Act (FCA):*** *A physician knowingly submits claims to Medicare for medical services not provided or for a higher level of medical services than actually provided.*
2. ***Anti-Kickback Statute (AKS):*** *A provider receives cash or below-fair-market-value rent for medical office space in exchange for referrals.*
3. ***Physician Self-Referral Law (Stark law):*** *A physician refers a beneficiary for a designated health service to a clinic where the physician has an investment interest.*
4. ***Exclusion Authorities:*** *Several doctors and medical clinics conspire in a coordinated scheme to defraud the Medicare Program by submitting medically unnecessary claims for power wheelchairs.*
5. ***Civil Monetary Penalties Law (CMPL):*** *Includes making false statements or misrepresentations on applications or contracts to participate in the Federal health care programs.*

Resource:
https://oig.hhs.gov/compliance/physician-education/fraud-abuse-laws/

Midland Health NEW Compliance Hotline
855-662-SAFE (7233)
Midland Health ID#: 6874433130
This ID# is required to submit a report.

MIDLAND HEALTH

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DEPARTMENT OF JUSTICE NEWS: FALSE CLAIMS ACT

Florida-Based Medicare Reimbursement Consultant Resolves Litigation for Allegedly Causing False Diabetic Supply Claims to Medicare

Medicare reimbursement consultant Ted Albin and his wholly-owned consulting and billing firm Grapevine Billing and Consulting Services Inc. (Grapevine), both based in Stuart, Florida, have agreed to pay $50,000 to resolve allegations that they violated the False Claims Act. This settlement resolves allegations that Albin and Grapevine caused the submission of false claims to Medicare because of kickbacks to Medicare beneficiaries and because patients were ineligible to receive glucometers. This settlement is based on the United States' analysis of financial disclosures made by Grapevine.

"Consultants must abide by federal requirements when providing Medicare billing advice," said Acting Assistant Attorney General Brian M. Boynton for the Justice Department's Civil Division. "We will continue to protect the integrity of federal health insurance programs by pursuing individuals or entities responsible for the submission of false or fraudulent claims, including those who cause such claims to be submitted."

Read entire article:
https://www.justice.gov/opa/pr/florida-based-medicare-reimbursement-consultant-resolves-litigation-allegedly-causing-false

Flower Mound Hospital to Pay $18.2 Million to Settle Federal and State False Claims Act Allegations Arising from Improper Inducements to Referring Physicians

Flower Mound Hospital Partners LLC (Flower Mound Hospital), a partially physician-owned hospital in Flower Mound, Texas, has agreed to pay $18.2 million to resolve allegations that it violated the False Claims Act by knowingly submitting claims to the Medicare, Medicaid and TRICARE programs that resulted from violations of the Physician Self-Referral Law and the Anti-Kickback Statute.

The Physician Self-Referral Law, commonly known as the Stark Law, prohibits a hospital from billing for certain services referred by physicians with whom the hospital has a financial relationship, unless that relationship satisfies one of the law's statutory or regulatory exceptions. The Anti-Kickback Statute prohibits offering or paying remuneration to induce the referral of items or services covered by Medicare, Medicaid and other federally funded programs. Both the Stark Law and the Anti-Kickback Statute are intended to ensure that medical judgments are not compromised by improper financial inducements.

Read entire article:
https://www.justice.gov/opa/pr/flower-mound-hospital-pay-182-million-settle-federal-and-state-false-claims-act-allegations#:~:text=The%20Anti%E2%80%91Kickback%20Statute%20prohibits,and%20other%20federally%20funded%20programs

DID YOU KNOW...

Anti-Kickback Statute (AKS)

The AKS is a criminal law that 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 (e.g., drugs, supplies, or health care services for Medicare or Medicaid patients).

Resource:
https://oig.hhs.gov/compliance/physician-education/fraud-abuse-laws/

MIDLAND HEALTH

MIDLAND HEALTH POLICYTECH

MIDLAND HEALTH • PT POLICYTECH® Policy & Procedure Management

MEDICAL STAFF OFFICE – CODE OF CONDUCT FOR MEDICAL STAFF AND PRACTITIONERS

1.0 Purpose: This policy is to ensure that Midland Memorial Hospital is a safe and constructive workplace for everyone who is striving to provide the highest-quality patient care and to provide a method for reviewing and reporting events of physician behavior that are unexpected or in violation of the medical staff bylaws, regulations, and policies.

1.1 It is the expectation of the [Midland memorial Hospital] board of trustees that all members of the medical staff act in a professional and cooperative manner at the hospital, treating all patients and persons involved in their care with courtesy, dignity, and respect. These expectations are defined by the code of conduct.

1.2 Each member of the medical staff (individually, "physician") granted privileges at the hospital shall be required to acknowledge and agree to be bound by the code of conduct at the time of appointment / reappointment to promote and focus awareness of the essential elements of this policy.

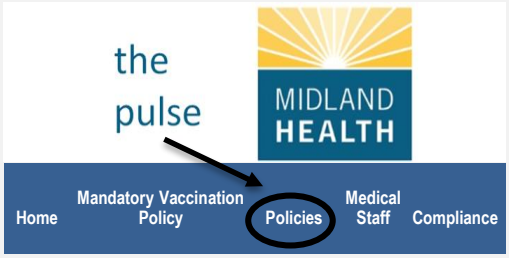
1.3 This policy sets forth procedures for reviewing and addressing behavioral incidents when a member of the medical staff conducts himself or herself in a manner that is inconsistent with this code of conduct.

2.0 Definitions: Disruptive or inappropriate behavior can be defined as an aberrant style of personal interaction between members of the healthcare team, patients, and/or their family members that interferes with the delivery of excellent patient care. The behavior could take the form of language, personal habits, or physical confrontation. The following is a list of examples and is not intended to be all-inclusive of disruptive or inappropriate behavior:

Read entire Policy: Midland Health PolicyTech #6541
"Medical Staff Office: Code of Conduct for Medical Staff & Practitioners"

Midland Health PolicyTech Instructions

Click this link located on the Midland Health intranet "Policies"
https://midland.policytech.com/dotNet/noAuth/login.aspx?ReturnUrl=%2f



IN OTHER COMPLIANCE NEWS

LINK 1

Sapphire Patient Care Confirmed as HIPAA Compliant

https://www.hipaajournal.com/sapphire-patient-care-confirmed-as-hipaa-compliant/

LINK 2

RI Attorney General Subpoenas RIPTA and UnitedHealthcare Over 22,000-Record Data Breach

https://www.hipaajournal.com/ri-attorney-general-subpoenas-ripta-and-unitedhealthcare-over-22000-record-data-breach/

LINK 3

CaptureRx Proposes $4.75 Million Settlement to End Data Breach Litigation

https://www.hipaajournal.com/capturerx-proposes-4-75-million-settlement-to-end-data-breach-litigation/

LINK 4

HHS Raises Awareness of Threats to Electronic Health Record Systems

https://www.hipaajournal.com/hhs-raises-awareness-of-threats-to-electronic-health-record-systems/

PHYSICIAN SELF-REFERRAL LAW *(STARK LAW)*

EXAMPLES OF STARK LAW VIOLATIONS

ADVENTIST HEALTH SYSTEM - *Miscoded Claims*

Allegations

- Violating the False Claims Act by maintaining improper compensation arrangements with referring physicians and miscoding claims
- Submitting bills to Medicare for its employed physicians' professional services containing certain improper coding modifiers, and thereby obtaining greater reimbursement for these services than they were entitled to

Final payout: $115 Million

INFIRMARY HEALTH SYSTEM - *Inter-Practice Referral Agreement*

Allegations

- Violating the False Claims Act by paying or receiving bribes in connection with claims to the Medicare program
- Having agreements with Diagnostics Physician Group (DPG) to pay the group a percentage of Medicare payments for tests and procedures referred by DPG physicians
  - IMC agreed to pay DPG a share of the revenues the clinics collected, including Medicare revenues from diagnostic imaging and laboratory tests
  - After IMC acquired the IMC-Northside Clinic in 2008, the physicians practicing there joined DPG and entered into an agreement with the same key terms
  - An attorney for DPG warned employees of both IMC and DPG that this arrangement likely violated the law, but the agreement wasn't terminated

Final payout: $24.5 Million

Resource: https://www.99mgmt.com/blog/stark-law-violation-examples

ANTI-KICKBACK STATUTE (AKS)

ANTI-KICKBACK STATUTE

The kickback prohibition applies to all sources of referrals, even patients. For example, where the Medicare and Medicaid programs require patients to pay copays for services, you are generally required to collect that money from your patients. Routinely waiving these copays could implicate the AKS and you may not advertise that you will forgive copayments. However, you are free to waive a copayment if you make an individual determination that the patient cannot afford to pay or if your reasonable collection efforts fail. It is also legal to provide free or discounted services to uninsured people.

Kickbacks in health care can lead to: Overutilization, Increased program costs, Corruption of medical decision making, Patient steering, Unfair competition

Besides the AKS, the beneficiary inducement statute (42 U.S.C. § 1320a-7a(a)(5)) also imposes civil monetary penalties on physicians who offer remuneration to Medicare and Medicaid beneficiaries to influence them to use their services.

The Government does not need to prove patient harm or financial loss to the programs to show that a physician violated the AKS. A physician can be guilty of violating the AKS even if the physician actually rendered the service and the service was medically necessary. Taking money or gifts from a drug or device company or a durable medical equipment (DME) supplier is not justified by the argument that you would have prescribed that drug or ordered that wheelchair even without a kickback.

Resource:
https://oig.hhs.gov/compliance/physician-education/fraud-abuse-laws/