

COMPLIANCE CONNECTION



MARCH 2022



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

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

IN THIS ISSUE

FEATURE ARTICLE

Lab Owner Pleads Guilty to \$6.9 Million Genetic Testing & COVID-19 Testing Fraud Scheme

Midland Health PolicyTech

(See entire newsletter page 2)

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/>

Lab Owner Pleads Guilty to \$6.9 Million Genetic Testing & COVID-19 Testing Fraud Scheme



A Florida man pleaded guilty today in the Southern District of Florida to a \$6.9 million conspiracy to defraud Medicare by paying kickbacks and bribes to obtain doctors' orders for medically unnecessary lab tests that were then billed to Medicare. The defendant exploited the COVID-19 pandemic by bundling COVID-19 testing with other forms of testing that patients did not need, including genetic testing and tests for rare respiratory pathogens.

According to court documents, Christopher Licata, 45, of Delray Beach, admitted that, as owner of Boca Toxicology LLC (dba Lab Dynamics), he bribed patient brokers who would refer Medicare beneficiaries and doctors' orders authorizing medically unnecessary genetic testing to Licata's laboratory. Licata and these patient brokers entered into sham agreements to disguise the true purpose of these payments. Once the COVID-19 pandemic began, Licata exploited patients' fears of COVID-19 by bundling COVID-19 tests with more expensive, medically unnecessary testing, including respiratory pathogen panel testing and, at times, genetic testing for cardiovascular diseases, cancer, diabetes, obesity, Parkinson's, Alzheimer's and dementia. In total, Licata caused his laboratory to submit over \$6.9 million in false and fraudulent claims to Medicare for these medically unnecessary tests.

Read entire article:

<https://www.justice.gov/opa/pr/lab-owner-pleads-guilty-69-million-genetic-testing-covid-19-testing-fraud-scheme>

CIVIL MONETARY PENALTIES LAW

Emergency Ambulance Service Agreed to Pay \$430,000 for Allegedly Violating the Civil Monetary Penalties Law by Submitting Claims for Services Covered by the SNF Consolidated Billing Payment



On January 5, 2022, Emergency Ambulance Service, Inc. (EAS), Bohemia, New York, entered into a \$430,000 settlement agreement with OIG. The settlement agreement resolves allegations that EAS presented claims to Medicare Part B for ambulance transportation to and from skilled nursing facilities (SNFs) where such transportation was already covered by the SNF consolidated billing payment under Medicare Part A. OIG's Office of Audit Services and Office of Counsel to the Inspector General, represented by Senior Counsels Srishti Sheffner and Andrea Treese Berlin with the assistance of Paralegal Specialist Jennifer Hilton, collaborated to achieve this resolution.

Reference:

<https://oig.hhs.gov/fraud/enforcement/emergency-ambulance-service-agreed-to-pay-430000-for-allegedly-violating-the-civil-monetary-penalties-law-by-submitting-claims-for-services-covered-by-the-snf-consolidated-billing-payment/>

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MIDLAND HEALTH

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DID YOU KNOW...



False Claims Act (FCA)

The civil FCA protects the Government from being overcharged or sold shoddy goods or services. It is illegal to submit claims for payment to Medicare or Medicaid that you know or should know are false or fraudulent.

Resource:

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



MIDLAND
HEALTH



MIDLAND HEALTH CONFLICT OF INTEREST

Purpose: Midland Memorial Hospital (the "Hospital") strives to carry forth its purposes, through its governing board members, medical staff and allied health professionals (AHPs), employees, agency staff, independent contractors, vendors, volunteers and students ("Hospital Representatives") by adhering at all times to the highest standard of business and professional ethics. As stewards of the Hospital's purposes, Hospital Representatives have an ethical duty to exercise their responsibilities with the utmost good faith, due care and loyalty to the welfare and financial interests of the Hospital. Therefore, in pursuit of the same, the Hospital enacts this Conflict of Interest policy to help ensure Hospital Representatives' continuing commitment to these standards in any and all outside leadership and/or financial activities and transactions while working or volunteering for the Hospital. This policy is intended to supplement, but not replace, any Hospital policies or state and federal laws governing conflicts of interest applicable to nonprofit and charitable organizations.

Policy

A Hospital Representative may not use his or her position, or any knowledge gained as the result of his or her position, in any manner such that a conflict does or may arise between the Hospital's interests and the Hospital Representative's interests. A person violating this policy may be removed from his or her position or be terminated as an employee or contractor. If a member of the medical staff or an allied health professional violates this policy by involvement in a competing personal or business interest or enterprise or leadership position, he or she may be required to terminate his or her involvement in the personal or business interest or enterprise which is in direct competition with the Hospital (including but not necessarily limited to investments, employment, and outside joint ventures) or may be removed from his or her leadership position that directly conflicts with the Hospital's interests.

Read entire Policy:

Midland Health PolicyTech: "Conflict of Interest" (Policy #79)

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

Accellion Proposes \$8.1 Million Settlement to Resolve Class Action FTA Data Breach Lawsuit

<https://www.hipaajournal.com/accellion-proposes-8-1-settlement-to-resolve-class-action-fta-data-breach-lawsuit/>

LINK 2

Online Pharmacy Notifies 105,000 Patients About Cyberattack and Potential Theft of PHI

<https://www.hipaajournal.com/online-pharmacy-notifies-105000-patients-about-cyberattack-and-potential-theft-of-phi/>

LINK 3

EHR Vendor Facing Class Action Lawsuit Over 320,000-Record Data Breach

<https://www.hipaajournal.com/ehr-vendor-facing-class-action-lawsuit-over-320000-record-data-breach/>

LINK 4

New Jersey Fines Hackensack Healthcare Providers for PHI Breach and HIPAA Violations

<https://www.hipaajournal.com/new-jersey-fines-hackensack-healthcare-providers-for-phi-breach-and-hipaa-violations/>

Physician Self-Referral Law (The Stark Law)

The Physician Self-Referral Law, commonly referred to as the Stark law, prohibits physicians from referring patients to receive "designated health services" payable by Medicare or Medicaid from entities with which the physician or an immediate family member has a financial relationship, unless an exception applies. Financial relationships include both ownership/investment interests and compensation arrangements. For example, if you invest in an imaging center, the Stark law requires the resulting financial relationship to fit within an exception or you may not refer patients to the facility and the entity may not bill for the referred imaging services.

"Designated Health Services"

- clinical laboratory services;
- physical therapy, occupational therapy, and outpatient speech-language pathology services;
- radiology and certain other imaging services;
- radiation therapy services and supplies;
- DME and supplies;
- parenteral and enteral nutrients, equipment, and supplies;
- prosthetics, orthotics, and prosthetic devices and supplies;
- home health services;
- outpatient prescription drugs; and
- inpatient and outpatient hospital services.

Resource:

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

ANTI-KICKBACK STATUTE (AKS)

ANTI-KICKBACK STATUTE

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). Remuneration includes anything of value and can take many forms besides cash, such as free rent, expensive hotel stays and meals, and excessive compensation for medical directorships or consultancies. In some industries, it is acceptable to reward those who refer business to you. However, in the Federal health care programs, paying for referrals is a crime. The statute covers the payers of kickbacks-those who offer or pay remuneration- as well as the recipients of kickbacks-those who solicit or receive remuneration. Each party's intent is a key element of their liability under the AKS.

Criminal penalties and administrative sanctions for violating the AKS include fines, jail terms, and exclusion from participation in the Federal health care programs. Under the CMPL, physicians who pay or accept kickbacks also face penalties of up to \$50,000 per kickback plus three times the amount of the remuneration.

Safe harbors protect certain payment and business practices that could otherwise implicate the AKS from criminal and civil prosecution. To be protected by a safe harbor, an arrangement must fit squarely in the safe harbor and satisfy all of its requirements. Some safe harbors address personal services and rental agreements, investments in ambulatory surgical centers, and payments to bona fide employees.

Resource:

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

