

COMPLIANCE CONNECTION



NOVEMBER 2022



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.

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FEATURE ARTICLE

Corporate Compliance & Ethics Week
(November 6-12, 2022)

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/>

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MIDLAND HEALTH

COMPLIANCE TEAM

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Celebrate Corporate Compliance & Ethics Week November 6–12, 2022

CORPORATE COMPLIANCE AND ETHICS WEEK—WHAT'S IT ALL ABOUT?

A short history: The "official" Corporate Compliance and Ethics Week was first observed in 2005 as an event that could assist members of HCCA and SCCE with the need to educate staff on the importance of compliance and ethics. But the event's roots actually go back to 2002, when two HCCA members, Gene DeLaddy and Cheryl Atkinson, wrote an article for Compliance Today telling others about an awareness program at their facility. That event was called Compliance Awareness Week, and it was celebrated at the Carolinas HealthCare System in Charlotte, North Carolina.

The first National Corporate Compliance and Ethics Week was launched May 22-28, 2005. HCCA and SCCE have always co-sponsored the event, and early on, took steps to sponsor a resolution in the U.S. Senate. That resolution would have allowed a National Corporate Compliance and Ethics week to be officially recognized by Congress. Unfortunately, the senators who were shepherding the proposed resolution left office before it made its way through. But by that time, Corporate Compliance and Ethics Week had taken hold among members of both HCCA and SCCE, and compliance professionals across the country. In the early years, the event was celebrated during the last full week of May. It was later moved to the first full week of May to avoid Memorial Day.

Why celebrate? Corporate Compliance and Ethics Week offers a great opportunity to shine a spotlight on the importance of compliance and ethics at organizations. By having a designated week, the compliance staff can build awareness in ways that reinforce not just specific rules and regulations, but an overall culture of compliance. Using the "hook" of "**Corporate Compliance and Ethics Week**," emphasizes the overall message in several different ways. The importance of employee education is emphasized by the U.S. Federal Sentencing Guidelines' seven elements of an effective compliance and ethics program. The education element requires that steps be taken so all employees know and understand the compliance and ethics standards that they are expected to meet. With a week-long celebration of compliance and ethics, provides a great opportunity to introduce and reinforce chosen themes and basic goals including:

- **Awareness** – of the Code of Conduct, relevant laws/regulations, hotlines and other reporting methods, the organization's compliance and ethics staff, etc.
- **Recognition** – of training completion, compliance and ethics successes, etc.
- **Reinforcement** – of the culture of compliance for which the organization strives.

Resource:

<https://assets.hcca-info.org/portals/0/pdfs/resources/ccew/whycelebrate.pdf>

DID YOU KNOW...



HIPAA ENFORCEMENT RESULTS AS OF 08-31-2022

Since the compliance date of the Privacy Rule in April 2003, OCR has received over **306,862** HIPAA complaints and has initiated over **1,143** compliance reviews. **Ninety-seven percent** of these cases (**297,607**) have been resolved.

Resource: <https://www.hhs.gov/hipaa/for-professionals/compliance-enforcement/data/enforcement-highlights/index.html>





Compliance Program Progressive Discipline Policy

POLICY: Corrective action shall be imposed as a means of facilitating Midland Memorial Hospital's Compliance Program Plan and overall compliance program goal of hospital-wide compliance. Corrective action plans shall assist Midland Memorial Hospital employees, agency staff, medical staff, allied health professionals, vendors, volunteers and students ("Workforce Members") to understand specific issues and reduce the likelihood of future non-compliance. Corrective action, however, shall be sufficient to effectively address the particular instance of non-compliance and should reflect the severity of non-compliance and the Workforce Member's past record of adherence to compliance standards.

1. Basis for Corrective Action: Internal investigation reports, audit reports, consultant reports, reports of questionable practices and/or a person having knowledge of a violation and failing to report such violation may form the basis for imposing corrective action.
2. Elements of a Corrective Action Plan:
 - a. As appropriate given the nature of the non-compliance, a corrective action plan shall include, but will not necessarily be limited to, the following:
 - i. A resolution of specific problems identified;
 - ii. A recommendation to repay or not bill inappropriate claims;
 - iii. As directed by hospital counsel, a report to appropriate government authorities about the non-compliance;
 - iv. A recommended policy and/or procedure to modify any improper billing practices to reduce the likelihood of recurrence and to monitor any necessary adoption of and compliance with the recommendations;
 - v. Additional mandatory education and training for Workforce Members who are the subject of the corrective action;
 - vi. Other corrective action measures as required by hospital administration;
 - vii. Focused reviews of relevant documentation for a defined period of time;
 - viii. Other reasonable corrective measures calculated to ensure adherence to the compliance program.
 - b. The Compliance Officer shall follow up and audit corrective action plans to determine whether the corrective action plan is being followed and is effective. The failure of an individual subject to a corrective action plan to adhere to the plan shall be grounds for further corrective action.

*Read entire Policy: Midland Health PolicyTech #3887
"HIPAA Section 14.1: Compliance Program Progressive Discipline Policy"*

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

FTC Sues Kochava Over Unlawful Collection and Sale of Sensitive Geolocation Data

<https://www.hipaajournal.com/ftc-sues-kochava-over-unlawful-collection-and-sale-of-sensitive-geolocation-data/>

LINK 3

OIG Calls for Greater Oversight of the Cybersecurity of the Organ Procurement and Transplantation Network

<https://www.hipaajournal.com/oig-calls-for-greater-oversight-of-the-cybersecurity-of-the-organ-procurement-and-transplantation-network/>

LINK 2

Humana & Cotiviti Settle Class Action Data Breach Lawsuit

<https://www.hipaajournal.com/humana-cotiviti-settle-class-action-data-breach-lawsuit/>

LINK 4

Improper Disposal of PHI Results in \$300,640 HIPAA Penalty

<https://www.hipaajournal.com/improper-disposal-of-phi-results-in-300640-hipaa-penalty/>

Arlington Man Sentenced for East Texas Health Care Fraud Scheme

TEXARKANA, Texas – An Arlington man has been sentenced to federal prison for his role in a health care fraud scheme in the Eastern District of Texas, announced U.S. Attorney Brit Featherston.

Jason Neil Hughes, 48, pleaded guilty on Sep. 10, 2021, to health care fraud and was sentenced to 14 months in federal prison today by U.S. District Judge Robert W. Schroeder, III. Hughes was also ordered to pay restitution in the amount of \$416,124.68 to private health insurers.

According to information presented in court, Hughes was the owner and operator of ChangePoint Counseling Service, a mental health clinic in Forney, Texas. Hughes founded ChangePoint in 2013 and sold it in 2019. Between 2015 and 2019, Hughes carried out a scheme to defraud private health care insurers through the submission of false and fraudulent claims. Hughes and others incorrectly billed private insurance claims using a Texarkana doctor's National Provider Identifier ("NPI") for counseling services that the doctor did not provide. Although ChangePoint's counselors had their own NPI numbers that could be used for billing counseling services, ChangePoint—at Hughes's direction—used the doctor's NPI to submit claims because the use of the doctor's NPI resulted in higher payments from insurers. This billing practice resulted in ChangePoint receiving an average of 100% to 120% additional money paid per service from health insurers.

This case was investigated by the Federal Bureau of Investigation's Tyler Field Office and prosecuted by Assistant U.S. Attorney Robert Austin Wells.

Resource:
<https://www.justice.gov/usao-edtx/pr/arlington-man-sentenced-east-texas-health-care-fraud-scheme>

ANTI-KICKBACK STATUTE (AKS)

Justice Department Files False Claims Act Complaint Against Two Laboratory CEOs, One Hospital CEO and Others Across Texas, New York, and Pennsylvania

The Justice Department has filed a complaint against two laboratory CEOs, one hospital CEO and other individuals and entities, alleging False Claims Act violations based on patient referrals in violation of the Anti-Kickback Statute and the Stark Law, as well as claims otherwise improperly billed to federal healthcare programs for laboratory testing.

According to the United States' complaint, laboratory executives and employees at True Health Diagnostics LLC (THD) and Boston Heart Diagnostics Corporation (BHD) allegedly conspired with small Texas hospitals, including Rockdale Hospital dba Little River Healthcare (LRH), to pay doctors to induce referrals to the hospitals for laboratory testing, which was then performed by BHD or THD. The complaint alleges that the hospitals paid a portion of their laboratory profits to recruiters, who in turn kicked back those funds to the referring doctors. The recruiters allegedly set up companies known as management service organizations (MSOs) to make payments to referring doctors that were disguised as investment returns but were actually based on, and offered in exchange for, the doctors' referrals. As alleged in the complaint, BHD and THD executives and sales force employees leveraged the MSO kickbacks to doctors to increase referrals and, in turn, their bonuses and commissions. The complaint alleges that laboratory tests resulting from this referral scheme were billed to various federal health care programs, and that the claims not only were tainted by improper inducements but, in many cases, also involved tests that were not reasonable and necessary. In addition, the complaint alleges that, to increase reimbursement, LRH falsely billed the laboratory tests as hospital outpatient services.

Read entire article:
<https://www.justice.gov/opa/pr/justice-department-files-false-claims-act-complaint-against-two-laboratory-ceos-one-hospital>

