

# Upstate University Hospital Institutional Compliance Program Physician Orientation



2014

## Corporate Compliance

- Upstate University Hospital and the Faculty Practice Plans have active institutional (corporate) compliance programs because we are committed to identifying and preventing potential compliance-related problems such as fraud, waste and abuse.
- We operate in a highly regulated environment, so we must insure we maintain high legal and ethical standards, not only with the care we provide to our patients, but also with our other business activities.
- Violations of the Upstate University Hospital Compliance Program threaten the hospital's status as a reliable, honest and trustworthy provider and illegal or improper conduct may subject Upstate to civil and criminal penalties. Therefore, it is important that any known or suspected legal or ethical violations be promptly brought to the attention of the Institutional Compliance Officer.



# Compliance Efforts

- Compliance efforts are outlined in our Hospital and Faculty Practice Compliance Plans.
  - Hospital: [www.upstate.edu/policies/intra/?CatID=HCP](http://www.upstate.edu/policies/intra/?CatID=HCP)
  - Faculty Practice: [www.upstate.edu/compliance/intra/fac.php](http://www.upstate.edu/compliance/intra/fac.php)
- These efforts are designed to establish a culture within the organization that promotes the prevention, detection and resolution of types of conduct that do not conform with Federal, State and private payer health care program requirements, as well as the hospital's ethical and business practices.



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# “Compliance” Means...

- “Compliance” means doing the right thing, both legally and ethically, by pledging to follow all the rules, regulations and policies set forth by:
  - State, Federal and Local Government
  - SUNY Board of Trustees
  - Professional Standards
  - Government and Private Insurance
  - Hospital Administration
  - Binding Contracts

In a nutshell:  
***No lying. No cheating, No stealing.***



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## Physician High-Risk Compliance Concerns Include: (But Are Not Limited To)

- E & M coding and lack of documentation
- Electronic medical record (EMR) documentation
- Conflicts of interest
- Teaching physician services
- Fraud & Abuse such as:
  - Offering professional courtesy discounts
  - Billing for non-covered service as if covered
  - Billing services not rendered or documented
  - Billing medically unnecessary services
  - Misrepresenting diagnosis to justify services
  - Improper inducements



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## Fraud & Abuse

- Health care fraud is a serious problem.
  - As a physician, you must be knowledgeable about fraud & abuse laws.
  - Violating federal or State fraud & abuse laws can result in criminal penalties, civil fines, exclusion from participation in the Medicare and Medicaid programs and even loss of your medical license.
- FRAUD: Obtaining a benefit through intentional misrepresentation or concealment of material facts.
- WASTE: Includes incurring unnecessary costs as a result of deficient management, practices or controls.
- ABUSE: Includes excessively or improperly using resources.



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# Fraud & Abuse Laws

The 5 most important Federal Fraud & Abuse laws applicable to physicians are:

1. False Claims Act (FCA)
2. Anti-Kickback Statute
3. Physician Self-Referral Law (Stark)
4. Exclusion Statute
5. Civil Monetary Penalty

These laws are summarized in slides 8 - 14 for your reference.



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## 1. False Claims Act

- Prohibits submission of false or fraudulent claims for payment.
- Claims may be considered false:
  - if the service was not actually rendered.
  - is provided but already covered under another claim.
  - is miscoded or is not supported by documentation in the medical record.

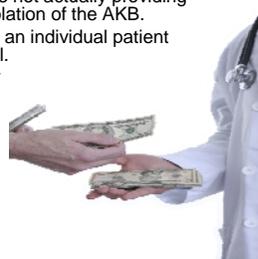


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## 2. Anti-Kickback Statute

- Prohibits asking for or receiving anything of value (remuneration) in exchange for referrals of health care program business.
- This applies to both payers and recipients of kickbacks.
  - Just asking for or offering a kickback could violate the law.
- This is also implicated when physicians give patients financial incentives to use their services.
  - Law does not prohibit you from offering free care, however, if you choose to waive copayments from patients but still bill the insurer, you are not actually providing free care and in some circumstances you could be in violation of the AKB.
  - You are free to waive a copayment if you determine that an individual patient cannot afford to pay of if reasonable collection efforts fail. However, never advertise that your practice has a policy of forgiving copayments.
- This law prohibits in the healthcare industry some practices that may be common in other business sectors.



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## 3. Physician Self-Referral Law (Stark)

- Limits physician or physician's immediate family from referring Medicare or Medicaid patients for designated health services (DHS) to any healthcare entity in which the physician has a financial interest/relationship unless certain exceptions are met.
  - A REFERRAL is any physician request for a service/good payable under the Medicare/Medicaid programs.
- The Stark law is a strict liability law, which means proof of specific intent is not required.
- Indirect and/or direct financial relationships of yours and your immediate family members covered by Stark include:
  - Compensation relationships
    - » Example: Hospital pays physician for administrative services; Hospital pays medical group to supply services such as Medical Director and group pays the designated physician.
  - Ownership and/or investment interests
    - » Example: Physician-owned hospitals; Physician is a member of an LLC that owns a hospital.



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## Stark – cont...



- DESIGNATED HEALTH SERVICES include:

- Clinical Laboratory
- Physician Therapy
- Occupational Therapy
- Radiology
- Durable Medical Equipment
- Parenteral and Enteral Nutrients
- Prosthetics
- Orthotics
- Home Health Services
- Outpatient Prescription Drugs
- Inpatient and Outpatient Hospital Services



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## Stark – cont...

- Many arrangements can be structured to avoid the risk of fraud.
  - Both the Anti-Kickback and Stark laws provide for either “Safe Harbors” or exceptions to the law.
  - You may want to consult with your healthcare attorney for assistance in structuring your arrangements properly.
- STARK EXCEPTIONS include:
  - Publicly traded securities and mutual fund
  - Rural providers
  - Office space rental
  - Equipment rental
  - Bona fide employment
  - Personal service arrangements
  - Physician recruitment
  - Isolated transactions
  - Certain arrangements with hospitals
  - Group practice arrangements with hospitals
  - Payments by a physician



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## 4. Exclusion Statute

- Excludes your participation in the Medicare and/or Medicaid programs.
- Exclusion from participation in the Medicare and/or Medicaid program means neither you nor your employer or group practice can bill for treating any Medicare or Medicaid patients.



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## 5. Civil Monetary Penalties Law

- Invokes penalties of \$10,000 - \$50,000 per fraud/abuse violation.



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## Violations of Law Could Result In:

- Criminal penalties
- Civil fines
- Exclusion from participating in Medicare/Medicaid programs
- Loss of your medical license
  
- Deliberate ignorance of any of these laws is not a defense!



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## E&M Documentation for Billing

- The following are classified as evaluation and management services that professionals may bill for:
  - Inpatient Visits
  - Outpatient Visits
  - Office Visits
  - Consults  
(inpatient and outpatient)
  - Emergency Room Visits



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# Documentation

- Physicians **MUST** provide adequate documentation to support E&M service billed.
  - Maintenance of accurate and complete medical records to support payment of claims is critical.
  - If the record doesn't support the claimed service, the claim may be denied for you and/or the hospital.
  - Good documentation is also a quality of care issue and helps ensure your patients receive the best possible clinical care from you and other providers who rely on your records
- Please arrange for focused education on Evaluation & Management documentation, Teaching Physician Guidelines and other topics specific to your practice management by contacting your Practice Administrator.



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# Internal Resources

- Darlene Noyes
  - Institutional Compliance Officer for Hospital Affairs
  - Phone: 315-464-4343
  - E-Mail: [noyesda@upstate.edu](mailto:noyesda@upstate.edu)
  - Hospital Compliance Plan: [www.upstate.edu/compliance](http://www.upstate.edu/compliance)
- Deb Gregoire
  - Institutional Compliance Officer for Faculty Practice Plan
  - Phone: 315-464-4793
  - E-Mail: [baxterd@upstate.edu](mailto:baxterd@upstate.edu)
  - Faculty Practice Compliance Plan: [www.upstate.edu/compliance](http://www.upstate.edu/compliance)



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# Additional Information

- False Claims Act
  - [www.upstate.edu/policies/documents/intra/HCP\\_F-02.pdf](http://www.upstate.edu/policies/documents/intra/HCP_F-02.pdf)
  - [www.gpoaccess.gov/uscode/index.html](http://www.gpoaccess.gov/uscode/index.html)
- Stark Law
  - [www.upstate.edu/policies/documents/intra/HCP\\_S-01.pdf](http://www.upstate.edu/policies/documents/intra/HCP_S-01.pdf)
  - [www.cms.gov/medicare/fraud-and-abuse/physiciansselfreferral/index.html](http://www.cms.gov/medicare/fraud-and-abuse/physiciansselfreferral/index.html)
- Anti-Kickback Law
  - [www.upstate.edu/policies/documents/intra/HCP\\_C-07.pdf](http://www.upstate.edu/policies/documents/intra/HCP_C-07.pdf)
  - [www.ssa.gov/OP\\_Home/ssact/title11/1128B.htm](http://www.ssa.gov/OP_Home/ssact/title11/1128B.htm)
- Teaching Physician Documentation Rules
  - [www.upstate.edu/compliance/intra/pdf/FPP-217.pdf](http://www.upstate.edu/compliance/intra/pdf/FPP-217.pdf)
- Exclusion Statute
  - [www.oig.hhs.gov/fraud/exclusion.html](http://www.oig.hhs.gov/fraud/exclusion.html)
  - [www.omig.state.ny.us](http://www.omig.state.ny.us)
- E & M Documentation
  - [www.upstate.edu/compliance/intra/pdf/FPP-511.pdf](http://www.upstate.edu/compliance/intra/pdf/FPP-511.pdf)
- A Roadmap for New Physicians: Avoiding Medicare and Medicaid Fraud and Abuse
  - [http://oig.hhs.gov/compliance/physician-education/roadmap\\_web\\_version.pdf](http://oig.hhs.gov/compliance/physician-education/roadmap_web_version.pdf)



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