

Date of Review: June 17, 2008

Original Date: August 17, 2006

Prior Reviews: September 17, 2007

Approved: Robert R. Michalski

**Subject: Policy for Preventing and
Detecting Fraud, Waste and
Abuse in Federal and State
Healthcare Programs**

I. PURPOSE AND SCOPE OF POLICY

West Penn Allegheny Health System and its affiliated entities (collectively “Health System”) are committed to conducting all of their activities in an ethical, law abiding fashion. The Health System commitment to compliance involves communication of clear guidelines for employees, staff, officers, directors and when applicable contractors and agents to follow, as well as providing information, training and education regarding laws, regulations, policies and procedures which govern its clinical, research, education and business initiatives. The Health System is committed to promoting a culture which encourages and assists employees, staff, officers, directors, and when applicable contractors and agents to conduct Health System operations with integrity and in compliance with applicable laws, regulations and policies.

II. POLICY

As a health care provider, the Health System is monitored by a broad array of governmental and private entities, each with their own set of rules and regulations. Nowhere is this heightened scrutiny more apparent than at the federal level, where the preventions and detection of health care fraud, waste and abuse is now a paramount priority. Individuals and institutions who commit health care fraud, waste and abuse regarding payment for services under Medicare and Medicaid are subject to a wide variety of penalties. Such penalties include criminal liability, civil and administrative fines, exclusion from the Medicare and Medicaid programs and loss of medical license. The Health System is committed to promoting a culture which encourages and assists employees, staff, officers, directors and when applicable contractors and agents to conduct Health System operations with integrity and in compliance with applicable laws, regulations and policies including but not limited to:

FALSE CLAIMS ACT (31 U.S.C. Section 3729)

Health care providers (“Providers”) are prohibited from making false statements or representations to the government in an application for payment under the Medicare and Medicaid programs. The following four elements must be proven for a false claim violation to have occurred: (1) the Provider made a statement of material fact in an application for payment under the Medicare or Medicaid program; (2) the statement or representation was false; (3) the Provider knowingly and willfully made the statement; and (4) the Provider knew the statement was false. Imprisonment and/or civil fines will be imposed on Providers making such false claims.

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**ANTI-KICKBACK STATUTES
(42 U.S.C. 1320a-7b)**

- A. These statutes prohibit any type of offer or payment of any remuneration, whether paid “directly or indirectly, overtly or covertly, in cash or in kind,” that is knowingly and willfully intended to induce someone to refer Medicare, Medicaid, or other federal health program patients or to purchase, order, or recommend any item or service reimbursable by a federal health program. *Remuneration* is defined as a payment, kickback, gift, or bribe in the form of cash, services, or equipment. A violation of this prohibition can result in imprisonment, civil fines, exclusion from the Medicare and Medicaid programs and loss of medical license.
- B. “Safe Harbors” are provisions of federal law that protect business practices and relationships under the Anti-Kickback Statutes. These Safe Harbors include certain lease arrangements, personal service contracts and management agreements. However, it is important to consult with the Health System Legal Department before entering into a particular arrangement because each Safe Harbor has its own requirements that must be satisfied in order to fit within the Safe Harbor.

**STARK ACT
(42 U.S.C. 1395nn; 42 CFR 411 et. seq.; and 66 F.R. 856)**

- A. The Stark Act is a federal law that prohibits physicians from referring a Medicare or Medicaid patient to an entity furnishing laboratory services or certain types of services known as “designated health services,” if the physician or an immediate family member of the physician has a direct or indirect financial interest in the entity providing such services. A financial interest includes an ownership interest or compensation arrangement (the latter includes both the giving and receiving of compensation) unless the arrangement qualifies for an Exception. A violation of this prohibition can result in civil fines and exclusion from the Medicare and Medicaid programs.
- B. Exceptions are certain defined situations under the Stark Act in which a physician is permitted to receive payment for the referral of a Medicare or Medicaid patient to any entity in which he or she has a direct or indirect financial interest. These Exceptions include but are not limited to: services provided personally by or under the supervision of another physician in the same group practice; in-office ancillary services; rental of office space or equipment; *bona fide* employment or personal service arrangements; certain types of physician incentive plans; physician recruitment; isolated transactions; and fair market value compensation arrangements. Like the Safe Harbors, these Exceptions have many technical/legal

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requirements that must be met. It is important to consult with the Health System Legal Department before entering into a particular arrangement to determine if it fits within an identified Exception.

PENNSYLVANIA RESTRICTIONS

Many states, including Pennsylvania, have enacted laws to supplement the federal restrictions on Medicare and Medicaid patients. In particular, Pennsylvania's Medicaid Fraud & Abuse Control laws (62 P.S. §§ 1407-1408) ban the following arrangements by or with providers:

- The referral of medical assistance patients for financial consideration, or the solicitation of such an arrangement;
- The offering or paying of remuneration for referrals of patients for service or supplies;
- The execution of a rent or lease arrangement unless the space is leased for fair market value;
- The solicitation or receipt of a kickback, payment, gift, bribe or rebate with regards to a good, facility, service or item for which payment is made under a state medical assistance program; and
- The referral of medical assistance patients to independent laboratories, pharmacies, radiology, or other ancillary medical service facilities in which the physician or group has an ownership interest.

Pennsylvania law also requires providers to disclose to patients a financial or ownership interest in the facility to which the patient is referred. The providers may render recommendations felt to be appropriate, but the patient must ultimately be advised of his or her freedom of choice in selecting the facility.

III. THE HEALTH SYSTEM COMPLIANCE MODEL

A. Direction and Oversight

The Health System commitment to compliance is set forth in the Compliance Policies of each entity including the System Compliance Program policy, the Health System Code of Ethics; and direction from senior management:

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- The Health System Compliance Officer and his/her staff develop and implement Health System-wide compliance training and monitoring.
 - Health System Compliance Executive Committee, chaired by the Health System Compliance Officer, meets regularly to discuss and resolve pending compliance issues.
 - Health System Legal Department provides legal support to compliance efforts.

The Health System has developed a compliance program which stresses the following areas:

B. Education

In a wide variety of forums, employees, staff, officers, directors and when applicable contractors and agents are provided with mandatory training to ensure that each individual understands his or her responsibilities.

C. Internal Monitoring

The Health System proactively reviews and audits its own performance to increase the likelihood that issues are addressed before they become the subject of potential violations or external reviews.

D. Reporting Opportunities

As set forth in Sections IV and V below, and in applicable federal and state laws, the Health System employees, staff, officers, and directors have a series of internal and external avenues they may pursue, without fear of reprisal, if they wish to report any compliance related issues or problems. The Non-Retaliation Compliance Policy as well as provisions under applicable federal and state laws (including Pennsylvania Laws, 43 P.S. §§ 1421-1428), affords protections to employees who make a good faith report of wrongdoing or waste, verbally or in writing, to one of the employee's superiors, a compliance resource person, to an agent of your employer or to an appropriate authority. These protections prevent an employer or an agent of the employer from discharging, threatening or otherwise discriminating or retaliating against an employee's compensation, terms, conditions, location, or privileges of employment because the

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employee or a person acting on behalf of the employee makes a good faith report or is about to report, verbally or in writing, to the employer or appropriate authority of wrongdoing or waste.

E. Sanctions

Where appropriate, the Health System reserves the right to sanction employees, staff, officers, directors and when applicable contractors and agents who fail to perform their responsibilities in compliance with applicable laws and regulations.

IV. HEALTH SYSTEM MEMBER COMPLIANCE RESPONSIBILITIES

The fundamental responsibilities of all members of the Health System are to:

- Perform individual duties with integrity, in compliance with all applicable laws, regulations and policies; and
- Share any concerns regarding a compliance issue, either with your supervisor or compliance resource persons set forth below.

V. IMPORTANT COMPLIANCE CONTACTS AND RESOURCES

- Health System Compliance Office - (412) 330-4960.
- Legal Department - (412) 359-6060.
- Health System Compliance Line - (877) TO-SPEAK or (877) 867-7325 or Website <http://www.mycompliancereport.com/report.asp?fid=11&cid=wph&rpt=1>.

Any individual who becomes aware of a matter which should be reviewed can call or email on a confidential and anonymous basis.