



ALABAMA DEPARTMENT OF PUBLIC HEALTH


Scott Harris, M.D., M.P.H.
State Health Officer



POLICY ID# 2019-003
CLEARED BY: Janece Cook
DATE: 8/1/19

MEMORANDUM

TO: Medical Directors
District Administrators and Assistant Area Administrators
Bureau, Division, Office, and Branch Directors

FROM: Scott Harris, M.D., M.P.H. 
State Health Officer

DATE: August 1, 2019

SUBJECT: Compliance Policy 2019-003
Replaces Policy 2015-004

Attached is the revised Compliance Policy. It has been revised to remove references to ethics, update training requirements, update language regarding billing, and give broader directions regarding compliance violations.

This policy must be circulated to all employees. Supervisors are responsible for ensuring that current employees read the revised 2019 policy.

SH/PK
Attachment

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MISSION

The Alabama Department of Public Health (ADPH) has established a Compliance Program in accordance with federal, state, and local regulatory requirements. The mission of the Compliance Program is:

To advance the prevention of fraud, abuse, neglect, and waste in the administration and operation of ADPH while maintaining the fundamental mission of providing quality health care services and related activities; and to establish an organizational culture within ADPH which promotes prevention, detection, reporting, and resolution of instances of conduct that do not conform to federal and state regulations, rules and laws, private payer health care plan requirements, and ADPH's ethical policies.

ADPH is fully committed to ensuring that employees and contractors conduct business in a manner that complies with all applicable federal, state and local laws, as well as applicable policies and procedures. To demonstrate this commitment, adherence to these standards will be included in employee work habits and will be evaluated annually. Employees and contractors are responsible for knowing and understanding all policies and procedures that apply to them in their work and asking their supervisors or appropriate senior management for guidance whenever they have questions or concerns.

ADPH has developed this Compliance Policy as a resource to summarize health care compliance standards and provide an understanding of the ADPH Compliance Program. This Policy shall be read in conjunction with the most current Health Insurance Portability and Accountability Act (HIPAA) Privacy and Security Policy, Professional Conduct Policy, Employee Handbook, and Security Manual. Current versions of these documents can be found in the Policy Library, Document Library and on the ADPH website at www.alabamapublichealth.gov/compliance.

SCOPE

The material included in the ADPH Compliance Policy must be followed by all employees and contractors.

ADPH COMPLIANCE PROGRAM

ADPH is fully committed to ensuring compliance with applicable federal, state and local laws, and regulations. Therefore, each employee is required to review applicable policies and complete training to demonstrate their awareness of their responsibilities. Failure to comply with policies and procedures relating to compliance will result in progressive disciplinary action including, but not limited to, suspension or termination.

The department created and developed the ADPH Compliance Program. The mission of the Office of Compliance is to support and reinforce a culture of integrity through awareness programs, monitoring, and a swift response to activities of non-compliance.

Objectives

The Office of Compliance is dedicated to achieving the following objectives for ADPH:

- (1) Establish and maintain policies and procedures to prevent, detect, report, and resolve fraud, abuse, neglect, and waste in the administration and provision of health care services and related activities.
- (2) Establish and maintain effective internal controls of program operations to promote and realize the efficient management and monitoring of applicable regulations, rules, laws, requirements, and policies.
- (3) Establish a mechanism within the agency which promotes self-monitoring, detection, reporting, and resolution of compliance issues.
- (4) Minimize, through early detection and reporting, loss to federal and state governments due to false claims, and thereby, reduce ADPH and employees' potential exposure to civil damages and penalties, criminal sanctions, and administrative remedies, such as program exclusion.
- (5) Promote ethical and legal conduct in the workplace.
- (6) Take corrective action when operational or performance processes are inappropriately defined or applied relating to compliance.
- (7) Recommend appropriate disciplinary action to supervisors for non-compliant conduct by any employee, including merit and contract staff, and external and internal business associates.

Compliance Committee

The success of a compliance program relies upon assigning high-level personnel to oversee its implementation and operations. Therefore, a Compliance Committee has been tasked with reviewing proposed policies and procedures, providing input on risks, and making recommendations to the Compliance Officer. The committee will meet at least quarterly to discuss issues relating to compliance and to receive status reports on developing projects.

Compliance Education and Training Requirements

ADPH requires that all employees participate in compliance education. This education supports commitment to compliance with federal and state regulations, rules and laws, private health plans, requirements of licensing and certification boards and associations, and ADPH's policies and procedures, while in the performance of the job.

To meet this requirement, compliance training and policy review are presented to employees through various training methods and media, such as individualized written instructional materials, webcast, satellite broadcast seminars, or computerized testing.

The Compliance Program consists of three training components:

(1) **Initial Orientation** for ADPH employees.

- Required for all current employees upon implementation of the Compliance Policy.
- Completed within the first 2 weeks of employment for new employees.
- The applicable standards for employee conduct and policy on disciplinary action are referenced in the Initial Orientation. In addition, employees must review the applicable Professional Conduct Policy at the completion of Initial Orientation.

(2) **Specialized Training** for Billing, Clinical and other Selected Employees, Supervisors, Managers, Directors, and Administrators.

- Required for employees engaged in specific roles or functions which relate to areas of risk to fraud, abuse, neglect, and waste. These specific roles are recommended in the Office of Inspector General (OIG) Guidance. Bureau directors shall determine which employees are engaged in these specific roles and functions.
- Completed within the first 4 weeks of employment for new employees and those newly appointed to positions in which they are engaged in these specific roles and functions.
- The topics emphasized in the Specialized Training include a review of applicable laws; government and private payer reimbursement principles; general prohibitions on paying or receiving remuneration to induce referrals; improper alterations to clinical records; duty to report misconduct; and other specific topics. Specialized training may be provided by the Office of Compliance or other internal and external subject matter experts.

(3) **Annual Review** for All Employees.

- Provides an opportunity to re-emphasize the importance of compliance and the consequences of noncompliance.
- The employee signs the applicable Departmental Policies for Review at their annual performance appraisal.

OFFICE OF PROGRAM INTEGRITY (INTERNAL AUDIT)

The Office of Program Integrity (OPI) is charged with performing internal audits of departmental programs to ensure compliance with federal, state, and local laws and requirements. Internal auditing mechanisms are essential to a compliance program. All ADPH employees are required to fully cooperate with investigations implemented at the direction of OPI. A failure to cooperate with OPI investigations will subject the individual to progressive disciplinary action. OPI will do periodic HIPAA audits at various county health departments, offices or Bureaus. Findings from those investigations, along with corrective action plans, shall be provided to the Office of Compliance and the Office of General Counsel. Failure to submit a corrective action plan will be brought to the attention of the State Health Officer. If a corrective action plan is submitted and it is later discovered that the corrective action plan has not been followed, it may result in disciplinary action.

COMMITMENT TO PATIENTS AND CLIENTS

ADPH is dedicated to ensuring that our patients and clients receive quality care. ADPH honors patient's rights and communicates those rights in a well-publicized Notice of Privacy Practices.

ADPH does not deny the provision of care based on the age, disability, color, race, religion, sex, or sexual orientation of a patient or client. To demonstrate its commitment, ADPH has introduced a Civil Rights Plan. The plan also serves as a source of information for ADPH staff and the general public by setting out the civil rights administrative policies and procedures, identifying key contact persons within ADPH and linking the reader to applicable laws and guidelines. Any questions or complaints regarding the Civil Rights Plan should be directed to the Civil Rights Coordinator in the Employee Relations office by dialing (334) 206-9494. This plan is limited in application to programs and services offered by ADPH. The Civil Rights Plan does not apply to employment. Employee complaints and grievances should be addressed to the departmental Equal Employee Opportunity Coordinator by calling (334) 206-9494.

COMMITMENT TO PERSONNEL

All employees are required to read and understand the Employee Handbook which clarifies general employment provisions, the ADPH Standards of Conduct, and methods to handle complaints and grievances. The current copy of the Employee Handbook is available in the Lotus Notes Document Library under the Human Resources tab.

ADPH is committed to providing equal employment opportunity for all qualified persons without regard to their race, color, religion, sex, national origin, age, disability, gender, or genetic information. For more information, please view the Equal Employment Opportunity/Affirmative Action Policy located in the Lotus Notes Policy Library under the Human Resources tab.

DISCLOSURE OF CONFIDENTIAL INFORMATION

Legal documents include, but are not limited to: summons, subpoenas, third-party authorizations for the release of records, and claim notices. All legal documents related to ADPH business in its official capacity served at the state level should be delivered directly to the Office of General Counsel (OGC).¹ All legal documents served at the county or district level should be delivered to the county or district administrator. On the same day that the county or district administrator is presented with the documents, they should ensure that the documents are faxed to OGC for review or uploaded to the eHIPAA Log, if applicable.

If any ADPH employee erroneously accepts service of a legal document, the employee should contact OGC immediately. The employee will be instructed to fax the document to OGC and indicate on the cover sheet who originally received the document and when the document was received.

¹ For the Bureau of Health Provider Standards (HPS), specific documents have been identified as legal documents that may be handled by HPS. All other documents must be sent to the Office of General Counsel for review.

Any certified mail received by ADPH should be delivered to the addressee immediately and should be immediately opened by the addressee. When the addressee determines that they have received a legal document, they should report it immediately to the county or district administrator, their designee, or to OGC as appropriate. If it is determined that the addressee is on leave or away for an extended period, it must be provided to the supervisor and opened immediately.

For more information on how to handle legal documents, please refer to the memo issued by OGC entitled, "Employee Responsibilities in Responding to Legal Documents."

Office of General Counsel
201 Monroe Street, Suite 1540
Montgomery, AL 36104
(334) 206-5209 (Office)
(334) 206-5874 (Fax)

MEDICAL RECORD INTEGRITY

The accuracy of patient and client records is paramount to ADPH's commitment to ensuring quality health care. Documentation in medical records must properly reflect the date and author of the entry. Amendments to a medical record must be performed to the standards of the licensing body of the individual performing such an amendment. If the individual documenting in the record is not a licensed professional, they must mark through any incorrect entry in a paper record and document the date of the amendment and initial the entry. Late entries must be so noted and signed with the date and time documented. For electronic health records, the employees must follow guidance for amendments as guidance is provided. **Fraud, falsification of records, and placing patient or client confidentiality at risk will be grounds for disciplinary action, including suspension or termination.**

The privacy and security of patient records is vital. Therefore, ADPH educates employees on the importance of patient confidentiality and understanding how HIPAA applies to them and their work.

COMPLIANCE WITH LAWS, REGULATIONS, AND REQUIREMENTS

HIPAA

The confidentiality of protected health information (PHI) is a priority for the department. Therefore, ADPH adheres to all applicable portions of the HIPAA Privacy and Security rules. To oversee that effort, ADPH has designated a HIPAA Privacy Officer and an Information Security Officer (ISO). The HIPAA Privacy Officer will act as the Director of the Office of Compliance. This individual is responsible for overseeing HIPAA compliance and collaborating with the ISO to provide education to employees and act proactively to reduce threats to PHI and e-PHI. The ISO is responsible for ensuring compliance for e-PHI and is to direct local ADPH Security Officers as they work together to educate employees and advise management about

risks to e-PHI. The ISO shall be primarily responsible for updates to the ADPH Security Manual.

The HIPAA Privacy and Security Policy is available to all employees in the Lotus Notes Policy Library. The policy is updated as needed and ADPH employees are required to participate in refresher training. Periodic, focused refresher training may be provided at the direction of the Compliance Officer based on demonstrated weaknesses brought to the attention of the Office of Compliance.

ADPH adheres to all applicable portions of the HIPAA Security Rules and the Health Information Technology for Economical and Clinical Health Act. It is the primary function of the ISO to ensure that these security standards are addressed.

False Claims Act

In an effort to fight fraud and abuse, ADPH fully complies with the False Claims Act (FCA) and any applicable state laws. It is the policy of ADPH that claims for services paid by government and private payers are accurate, timely, and complete when submitted. An individual is in violation of the FCA if they “knowingly present, or cause to be presented, to the U.S. government a false or fraudulent claim for payment or approval; knowingly makes, uses, or causes to be made or used a false record or statement to get a false or fraudulent claim paid or approved by the government; or conspires to defraud the government by getting a false or fraudulent claim allowed or paid.”² Lawsuits filed under the FCA result in recovery of government funds paid as a result of an individual or entity filing a false claim. **Individuals may be subject to a felony charge for failure to disclose a known overpayment even if initially obtained innocently. In addition to serving prison time, paying civil monetary penalties and restitution, individuals who violate this act may be placed on the Office of Inspector General Exclusions list.**

The FCA contains a “whistleblower” provision which allows a private individual to file a lawsuit on behalf of the U.S. government if they are aware that false claims are being made. These claims can generally only be brought within a six-year period from the date of the violation or 3 years after the date the material facts become known or should have been known to appropriate U.S. officials. No claim can be brought under the FCA after the passage of ten years from the violation. Individuals bringing these claims are protected from retaliation. However, if an individual files a suit frivolously, that individual can be subject to sanctions.

Anti-Kickback Statute

In the health care industry, there are general concerns about the negative influence on the professional integrity of health care providers when items of value are accepted or conflicts of interest arise. The Anti-Kickback statute forbids any knowing and willful conduct involving the solicitation, receipt, offer, or payment of any kind of remuneration in return for referring an individual or recommending or arranging the purchase, lease, or ordering of an item or service that may be wholly or partially paid for under a federal health care program. **A violation of the**

² 31 U.S.C. § 3729

Anti-Kickback statute may lead to criminal penalties in addition to civil fines for the individual or entity violating the statutes.

Due to the complexity of the FCA and Anti-Kickback statute, employees are encouraged to contact the Office of General Counsel or the Office of Compliance should they have questions.

BILLING

Medical Record Coding

Federal programs, such as Medicare and Medicaid, as well as private payors establish coding standards that must be followed to receive reimbursement. It is essential that medical record services be accurately identified and appropriately documented by the health care provider. ADPH employees providing services to patients or clients are responsible for accurate documentation for services provided. It is illegal to submit claims that are inaccurate or intentionally misleading. Employees are prohibited from documenting services to patients who did not receive that service and misrepresenting a patient's or client's health condition for the benefit of financial gain. An employee that submits claims for which there is no documentation or presents inaccurate codes, even inadvertently, places that individual and ADPH in jeopardy of an allegation of noncompliance with the FCA.

ADPH recognizes the vital role that accurate billing plays in the appropriate health care decisions of our patients or clients. Therefore, ADPH will designate a billing unit to monitor and assist program staff with establishing accurate Current Procedural Terminology codes and diagnosis codes to be used for claims submission.

Third-Party Billing

For insured patients or clients, employees are prohibited from intentionally submitting inaccurate claims. Employees engaging in this practice may be criminally prosecuted and civilly liable for their actions. Therefore, employees should correct inaccuracies when they are brought to the attention of ADPH. Employees must also ensure that the documentation and codes submitted are accurate and based on the service provided. Finally, the code submitted must be justified based on the documentation in the patient's or client's health record.

Excluded, Suspended or Debarred Individuals or Entities

ADPH can neither employ nor bill for the services of an individual or entity that has been placed on an exclusions list for a federal health care program. Current employees must disclose their entry on any federal program exclusions list immediately upon learning of any such exclusion, debarment or suspension. They should also report any knowledge of any other employee or entity being paid by ADPH who may be included on an exclusion, suspension or debarment list. These reports should be made to the Office of Compliance. Once received, the Office of Compliance will investigate and provide guidance to appropriate ADPH senior staff.

ADPH utilizes a third-party vendor to run monthly checks of employees, contractors, ordering physicians, and payees against two federal and all currently available state databases. Those databases include:

- (1) Office of Inspector General (OIG)
- (2) System for Award Management (SAM)
- (3) 34 State Medicaid Sanction Lists

For more information on the ADPH processes for excluded, suspended, or debarred individuals or entities, contact the Office of Compliance.

RECORD RETENTION AND DISPOSITION

All ADPH records must be stored and disposed of in accordance with the Record and Retention Policy. This detailed document can be found in the Policy Library under the Bureau of Prevention, Promotion, and Support.

EXPECTATIONS OF LICENSING AND CERTIFICATION BOARDS AND ASSOCIATIONS

Employees who are licensed or certified by professional boards and associations to direct and perform clinical services are expected to also follow the administrative codes, standards of practice, and professional conduct specified by these organizations. It is the responsibility of these individuals to maintain a current, active license or certification. Any limitation or encumbrance to a professional license ordered by a licensing board must be immediately brought to the attention of their supervisor and the Office of Compliance.

CONFLICTS OF INTEREST

As an ADPH employee, you are expected to perform your duties in a professional manner and avoid the appearance of impropriety. This includes, but is not limited to, the following:

- (1) During working hours, employees must perform tasks associated with their employment at ADPH and are not to perform work functions for a secondary employer.
- (2) Avoid accepting secondary employment for a position that will cause you to be unable to fully perform your duties with ADPH.
- (3) Do not use confidential information that you learn through your employment at ADPH for personal gain.
- (4) Do not allow your professional decision making to be skewed by personal gain or the personal gain of family members.
- (5) Employees may not use annual, sick, comp, leave without pay, or federal medical leave act leave as a means for working for a secondary employer.

If you know or believe you may be engaging in a situation that is a conflict of interest, contact your supervisor and the Office of Human Resources immediately. An Outside Employment Notice must be completed and provided to the Office of Human Resources when you engage in employment activities outside of the department. This form can be found in the Document

Library attached to the Professional Conduct Policy. The Office of Human Resources will investigate the issue to determine whether a conflict exists.

REPORTING COMPLIANCE VIOLATIONS

All ADPH employees are required to report wrongdoing, suspected wrongdoing, or any violation of ADPH policies and procedures relating to compliance issues. **Failure to report known instances of compliance related issues may result in disciplinary action not only to the employee creating the violation, but also to the employee who was aware but failed to report the violation.** Examples of wrongdoing include, but are not limited to, the following:

- (1) Falsifying a medical record so that the record reflects that the employee provided a service that they did not perform.
- (2) Accessing a patient record as a means of gaining information about the patient when the employee has no treatment relationship to the patient and no work-related need to know the information.
- (3) Accepting monetary gifts in return for referrals.
- (4) Downloading or disclosing patient's personal health information or personal identifying information to provide to individuals for personal gain.
- (5) Falsifying leave documentation.
- (6) Falsifying or "padding" travel documentation to claim more reimbursement than allowed.
- (7) Using state resources for the furtherance of another job, position or personal use. For additional information refer to the Employee Handbook for Semi-Monthly Employees or Hourly Employee Handbook.
- (8) Soliciting or accepting gifts or door prizes from establishments that the department regulates or inspects. For additional information refer to the Professional Conduct Policy.

Compliance violations should be reported immediately. A report can take any of the following forms:

- (1) Contact the Office of Compliance directly by calling (334) 206-9324.
- (2) Utilize the Anonymous Compliance Hotline by calling (334) 834-7659.
- (3) Send an anonymous email complaint by completing the form located on the Anonymous Complaint page on the Compliance website at alabamapublichealth.gov/compliance.
- (4) Send a letter to Office of Compliance, P.O. Box 303017, Montgomery, Alabama 36104.
- (5) Call the Office of General Counsel at (334) 206-5209.
- (6) Call the Office of Human Resources at (334) 206-5284.

NON-RETALIATION FOR REPORTING VIOLATIONS

ADPH employees who report issues of non-compliance will not be subject to retaliation.

PROCEDURES FOR EXTERNAL AUDITS OR GOVERNMENT INVESTIGATIONS

Individuals requesting PHI for the purpose of performing an audit or investigation must meet legal requirements in order to access PHI held by ADPH. If a non-ADPH staff member requests to view PHI to perform an audit or investigation, you should take the following steps:

1. Ask for a copy of their badge and business card.
2. Notify your supervisor who will contact the Office of General Counsel and provide them with a copy of the badge and business card.
3. If the request is approved by the Office of General Counsel, provide the individual with a "Visitor's Badge" and ensure that the individual is escorted throughout their visit by an ADPH staff member who will also be available to answer questions.
4. If the information request involves PHI, and access to PHI is approved, remember to log any disclosures in the eHIPAA Log for any patient whose records are accessed.

Do not provide external auditors or investigators access to your passwords or login information. If access to ADPH systems is necessary, the Information Security Officer must be notified and will work to develop a means of accessing necessary systems.

Employee Responsibilities During Investigations

ADPH shall conduct investigations to gather and review evidence when complaints of non-compliance, misconduct, or suspected fraud, abuse, neglect, or waste are received. From the evidence, the complaint is either substantiated or proven to be untrue.

Two types of compliance investigations may be conducted regarding a complaint:

- (1) Internal Compliance Investigations may be conducted by senior management at the direction of the Office of Compliance, the Bureau of Home Care Services, the Nursing or Social Work Divisions of Field Operations, the Office of Human Resources, the Office of Program Integrity, the Office of General Counsel, or any other departmental unit authorized by the State Health Officer.
- (2) External Compliance Investigations may be conducted by non-departmental organizations. These organizations may include, but are not limited to:
 - Licensing Boards: The Alabama Board of Nursing, the Board of Social Worker Examiners, the Board of Physical Therapy, the Board of Occupational Therapy, the Board of Examiners of Speech-Language Pathology and Audiology, and respective professional associations.
 - Other State Agencies: The Alabama Medicaid Agency and other agencies for which services are provided, the Attorney General of the State of Alabama, and the Examiners of Public Accounts.
 - Federal Agencies: Center for Medicare/Medicaid Services (CMS), the Office of Inspector General, the Federal Bureau of Investigations, the

Department of Justice, the U.S. Attorneys' Office, and the Department of Health and Human Services.

- Other Entities and Individuals: Palmetto (PGBA, on behalf of CMS), insurance companies, attorneys representing beneficiaries and families with written consent from the beneficiary, or the legal representative of the estate of a deceased beneficiary.

Employees are responsible for doing the following in connection with an investigation:

- Cooperate fully with any investigation undertaken by the Office of Compliance, any investigative authorities from ADPH, or other state and federal agencies.
- Not knowingly and willfully prevent, obstruct, mislead, delay, or attempt to prevent, obstruct, mislead, or delay communication of information or records related to a violation of a federal or state health care offense to any official investigator.
- Immediately, but no later than 24-work hours after the occurrence, contact their supervisors if subpoenas are received at home or the workplace, concerning job-related fraudulent activity. If the fraudulent activity involves the supervisor, the employee may contact appropriate senior management or the Office of Compliance directly. Subpoenas received on the weekend should be reported no later than the next business day.

Supervisors are required to immediately, but no later than 24-work hours after the occurrence, contact the Office of Compliance or the appropriate ADPH authoritative office after being informed by an employee that phone calls, visits, or subpoenas were received at the employee's home or workplace, concerning job-related fraudulent activity. Reports received on the weekend should be reported no later than the next business day.

ENFORCEMENT OF DISCIPLINARY STANDARDS

Employees who negligently or willfully violate this Compliance Policy shall be subject to disciplinary action, including, but not limited to, suspension or termination. Additionally, the department will work with appropriate authorities to seek the maximum penalties for employees participating in fraud, waste, or abuse of government funds.