
IDENTIFYING COMPLIANCE PROBLEMS IN YOUR PRACTICE

ASSESS

ROADMAP

IMPLEMENTATION

Questions

COMPLIANCE

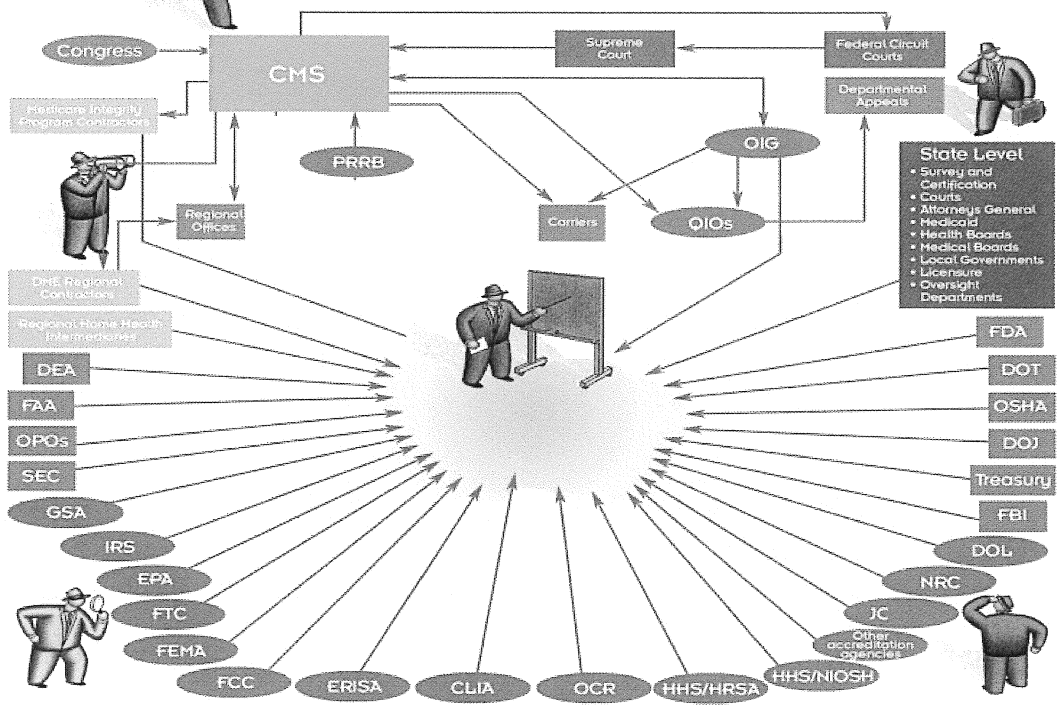
UPA

WHAT IS COMPLIANCE?

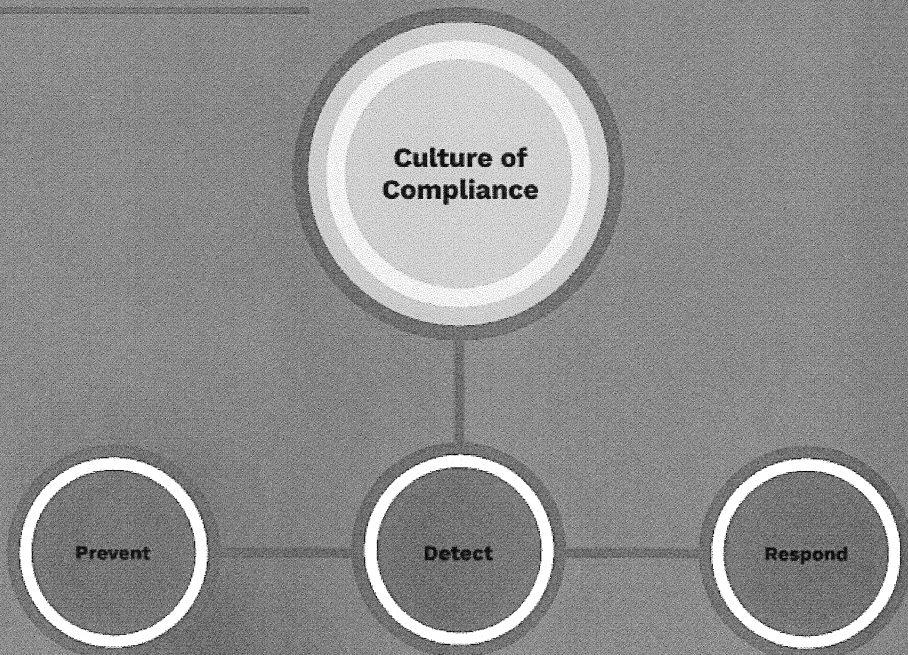
- > following healthcare rules, regulations, and laws established by federal and state government
- > following organizational policies and procedures

UPA

Oversight of the Health Care Industry



So, currently, where are you?



ASSESS CURRENT WORKFLOW AND STANDARDS

Workflow

Is my
practice
compliant?

Current
Policies and
Procedures

...now,
what?



WORKFLOW

- appointment system
- phone calls
- messaging
- scheduling process new and established
- order of diagnostics testing
- reporting diagnostic testing results
- medication ordering
- making referrals
- billing/coding
- chronic disease management
- receiving and processing patient information
- insurance and pay status



REGULATORY BODIES

- Health Insurance Portability and Accountability Act (HIPAA)
- Office of Inspector General (OIG)
- Clinical Laboratory Improvement Amendments (CLIA)
- Occupational Safety and Health Administration (OSHA)
- Anti-kickback Regulations
- Stark Law
- Employee Retirement Income Security Act (ERISA)
- Department of Labor (DOL)



IS MY PRACTICE COMPLIANT?

Ask yourself...

What is my practice doing to comply with CMS guidelines?

What is my practice doing to comply with HIPAA?

Who is keeping up with...

Monitoring and Auditing?

Implementation of Standards?

Training & Education?

Detection & Enforcement?



POLICIES & PROCEDURES

Compliance Program
Code of Conduct
HIPAA Privacy and Security Rules
OSHA
Fraud, Waste & Abuse/Red Flag
Harassment/Workplace Violence
Cultural Competency

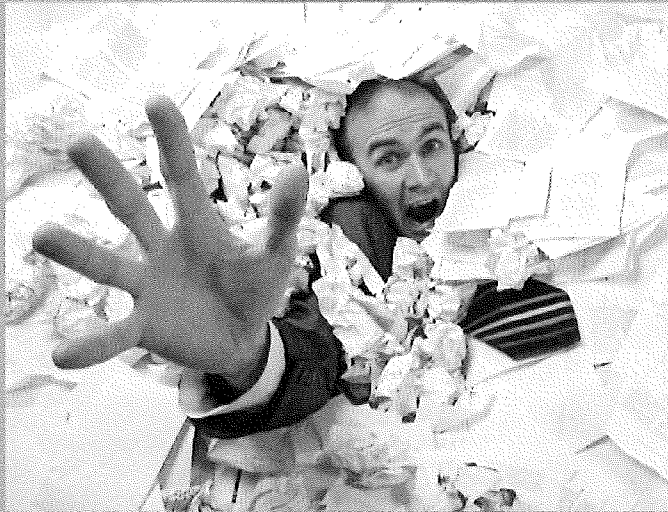
EMPLOYEE TRAINING

Provided within 90 days of employment and annually, thereafter

Focus-training provided, when needed

Monitoring: day-to-day, monthly & yearly





PHYSICIAN PRACTICE ROADMAP

OIG/DOJ/CMS

What are your relationships with...

- ...your payers
- ...other physicians and providers
- ...your vendors?

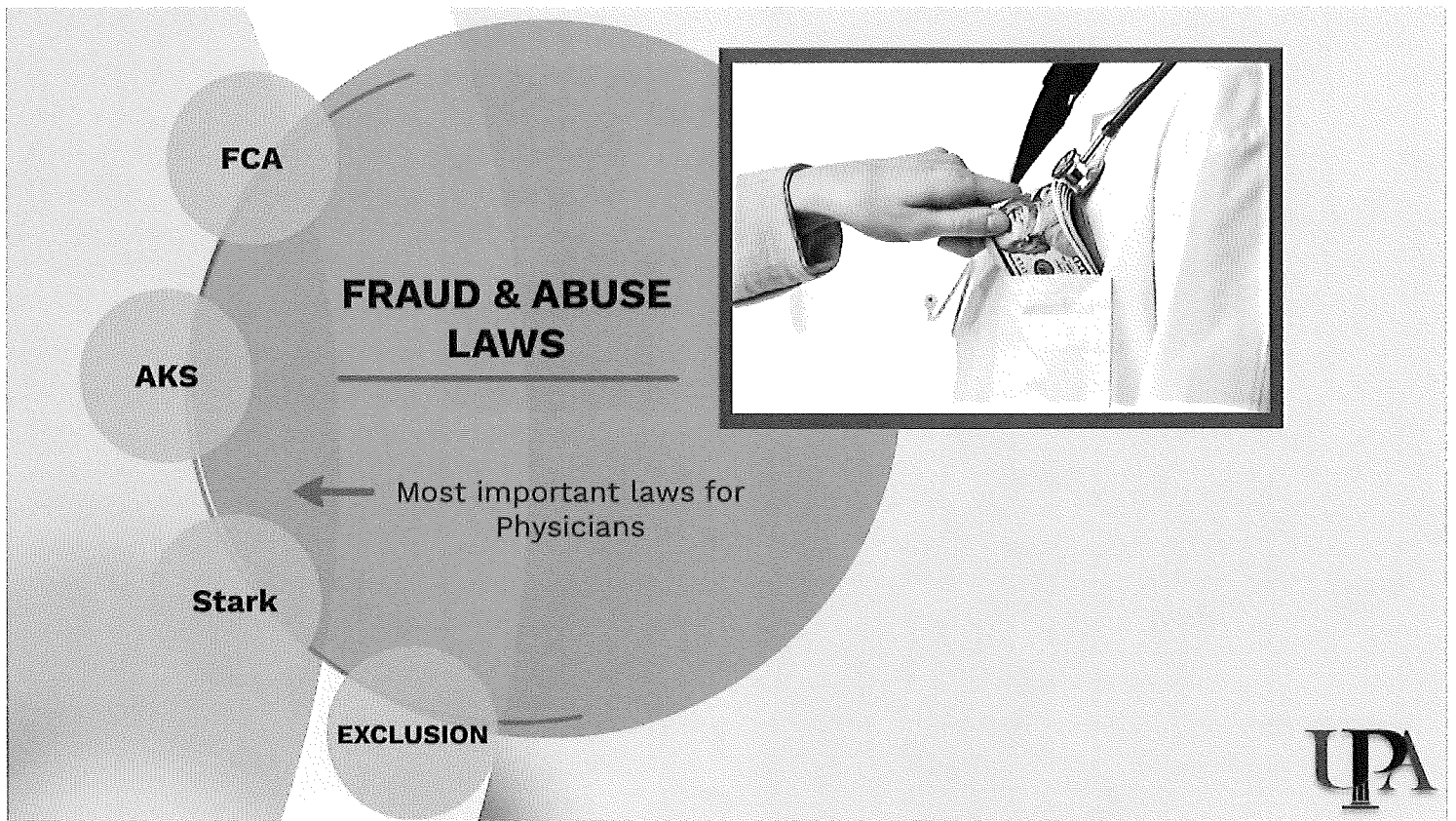
HIPAA

Privacy Rule
Security Rule

Laws & Enforcement

HIPAA





FALSE CLAIMS ACT

"It is illegal to submit claims for payment to Medicare or Medicaid that you know or should know are false or fraudulent."

- No specific intent is required
- Whistleblower provision
- Criminal penalties



Example

Mentor podiatrist sentenced to nearly three years in prison for fraudulently billing Medicare and Medicaid nearly \$1.2 million

A podiatrist with offices in Mentor was sentenced to nearly three years in prison for fraudulently billing Medicare and Medicaid nearly \$1.2 million. Robert J. Rosenstein, 65, of Highland Heights, was sentenced to 33 months in prison and ordered to pay approximately \$453,615 in restitution. He previously pleaded guilty to one count of health care fraud.

In 2016, Rosenstein was barred from participation in the Medicaid program.

Rosenstein knowingly and willingly defrauded Medicare and Medicaid. He did this by performing medical services for Medicare and Medicaid recipients and billing under another provider's name even though he knew he was excluded from participation in the programs.

This case was prosecuted by Assistant U.S. Attorney Megan R. Miller following an investigation by the Federal Bureau of Investigation, Health and Human Services – Office of Inspector General and the Ohio Attorney General's Medicare Fraud Control Unit.

Source

<https://www.justice.gov/usao-ndoh/pr/mentor-podiatrist-sentenced-nearly-three-years-prison-fraudulently-billing-medicare-and>

ANTI-KICKBACK STATUTE

"In the federal health care program, paying for referrals is a crime."

- Covers payers and recipients of kickbacks.
- Criminal penalties and administrative sanctions
- In addition penalties of up to 50K per kickback + 3X the amount of pay
- Patients co-pays, free and discounted services
- Safe harbors



Example

Tulsa doctor to pay \$84K after being involved in kickback scheme involving pain cream

A Tulsa doctor will pay the United States government \$84,666.42 after he allegedly accepted illegal kickbacks from the manufacturer when he gave his patients pain creams.

From 2013 to 2014, Claflin prescribed pain creams for his patients, facilitating the sale and distribution of his creams. As compensation for his services, the manufacturer paid him what was characterized as "medical director fees."

Officials said that because some of his patients were insured by TRICARE and the Office of Workers' Compensation Programs of the United States Department of Labor, the kickbacks were in violation of the False Claims Act. It is illegal to pay or receive kickbacks in conjunction with federal healthcare insurance.

Source

<https://www.kjrh.com/news/local-news/tulsa-doctor-to-pay-84k-after-being-involved-in-kickback-scheme-involving-pain-cream>

PHYSICIAN SELF-REFERRAL STARK LAW

Prohibits physicians from referring patients to "designated health services" with which the physician or their immediate family member has a financial relationship.

Here are the highlights...

- Designated health services
- Strict liability statute-no proof of intent is required
- Penalties, to include fines and exclusion
- Regulatory exceptions for financial relationships that do not pose a risk



Example

Kalispell Regional Healthcare System to Pay \$24 Million to Settle False Claims Act Allegations

Montana-based Kalispell Regional Healthcare System (KRH) along with six subsidiaries and related entities have agreed to pay \$24 million to resolve allegations that they violated the False Claims Act by paying physicians more than fair market value, and by conspiring to enter into arrangements that improperly induced referrals, the Department of Justice announced today.

The government alleged that the KRH entities had arrangements with referring physicians that violated the Medicare physician self-referral prohibition, commonly known as the Stark Law, and other arrangements that also violated the Anti-Kickback Statute.

Between 2010 and 2018, the KRH entities allegedly violated the Stark Law by paying excessive full-time compensation to more than 60 physician specialists – many of whom worked far less than full-time.

Source

<https://www.justice.gov/opa/pr/kalispell-regional-healthcare-system-pay-24-million-settle-false-claims-act-allegations>

EXCLUSION STATUTE

OIG exclusion requirements:

Physician or Practice found guilty of...

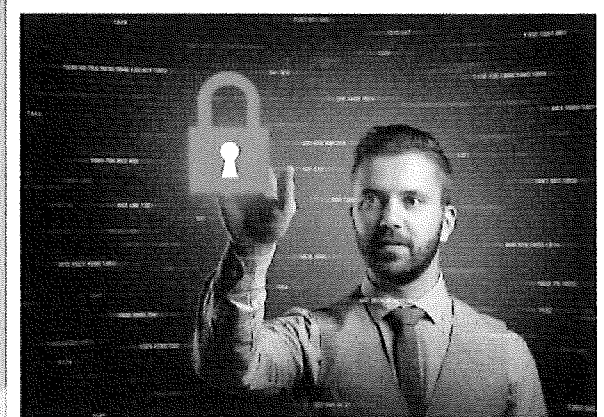
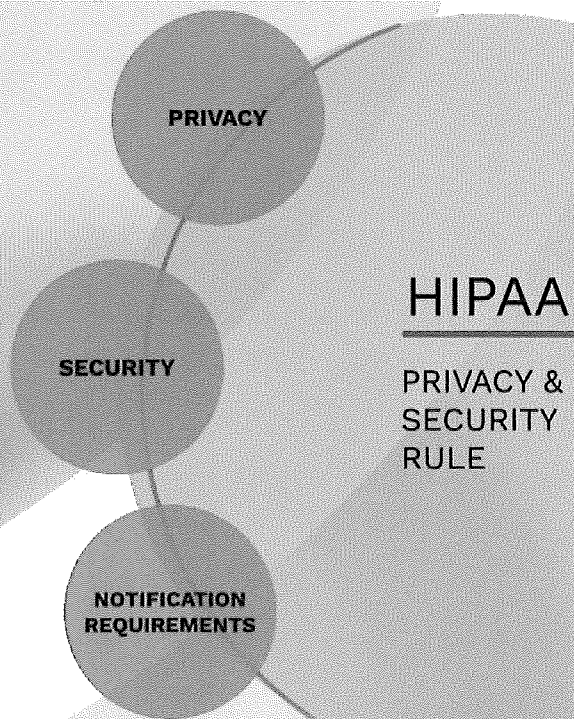
- Medicare or Medicaid fraud
- Patient abuse or neglect
- Felony convictions
- Felony convictions for other for healthcare-related fraud, theft, or other misconduct

Excluded physicians cannot bill Medicare and Medicaid directly or indirectly for services provided to patients.

Who must be screened? Current and prospective employees and contractors

CIVIL MONETARY PENALTIES LAWS

OIG may seek monetary penalties ranging from \$10,000 to \$50,000/violation



HIPAA Privacy Rule

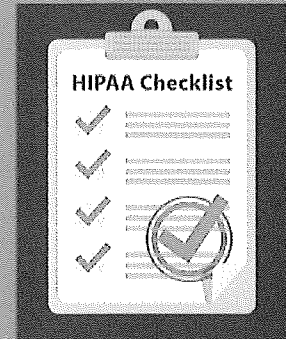
Covers protected health information (PHI) in paper, electronic and any other form.

What is your practice doing to...

...limit how PHI is being accessed, used & shared?

...secure PHI-paper and electronic form?

...assure patients know their rights?



Does your practice have...

...HIPAA policies and procedures in place?

...business associate agreements (BAAs) in place for vendors and contractors?

...reporting mechanisms for reporting of violations, like a hotline?

...annual training procedures & focus trainings when needed?

HIPAA Security Rule

Governs the electronic forms of PHI.

What is your practice doing to electronically safeguard...

- The access to,
- The use of,
- The integrity of,
- and the transmission of electronic health records (ePHI)?



Has your practice implemented...

... cyber & physical security parameters to protect its ePHI?

- Internal levels of access
- Vendors Access
- Encryption

...a cyber and physical security incident response plan?

...consistent system back-ups?

...critical systems identification and a disaster recovery plan?



BREACH NOTIFICATION REQUIREMENTS

Health care providers or business associates (BAs) are required to notify patients within a reasonable time, but no later than 60 days, whenever unauthorized access to their non-secured or non-encrypted health information occurs.

Civil monetary penalties of up to \$50,000 per incident

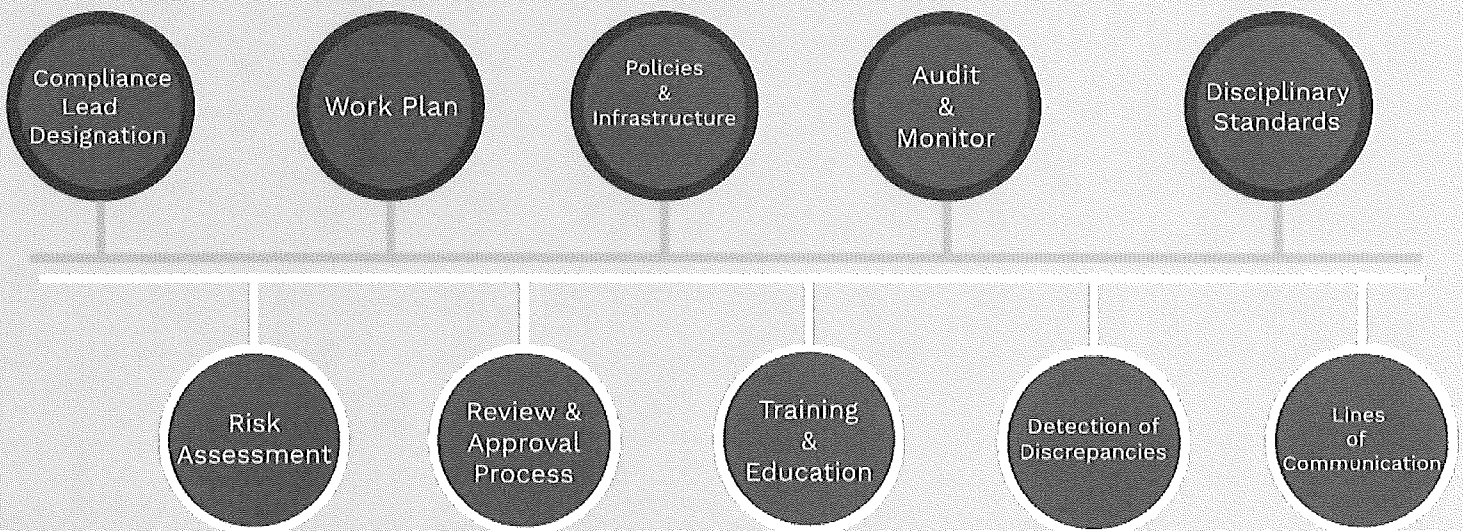
Breach of 500 or more patients must be reported to the Secretary of HHS and media outlets.

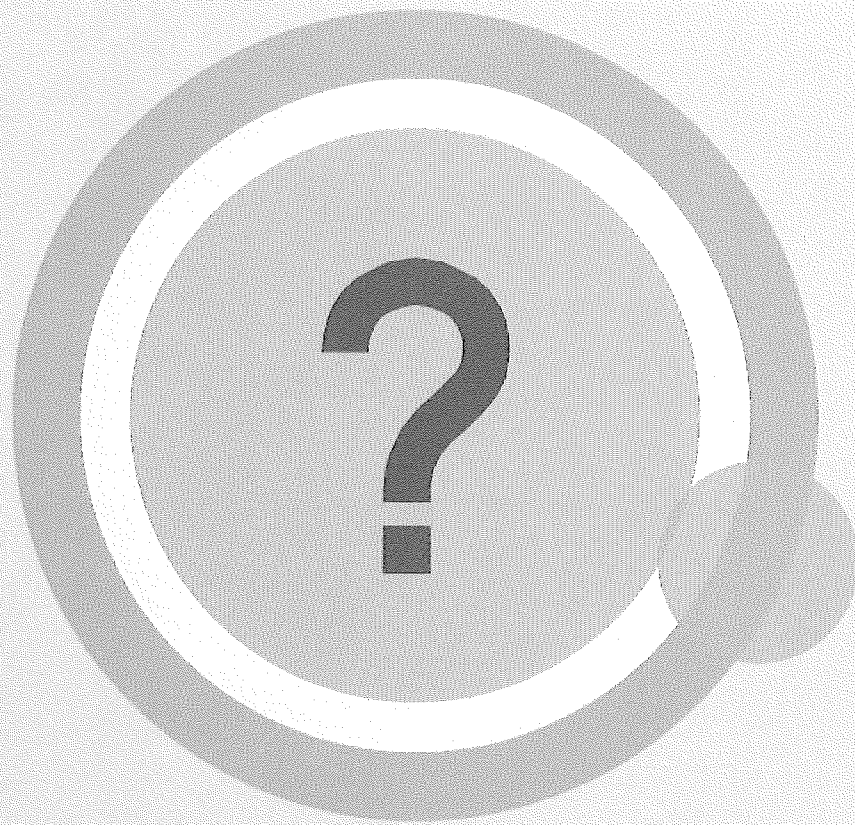
Other considerations:

Litigation and reputational impact to the organization



Compliance Program





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