



BOARD OF DIRECTORS SPECIAL MEETING

Thursday, June 27, 2024 at 5:00 pm
Room 225, Behavioral Health Center, 201 Mulholland Street, Bay City, MI 48708

AGENDA

Page

1. CALL TO ORDER & ROLL CALL
2. PUBLIC INPUT (3 Minute Maximum Per Person)
3. CORPORATE COMPLIANCE TRAINING
- 2-31 3.1 Consideration of motion to receive the annual Corporate Compliance Training – *See pages 2-31*
4. ADJOURNMENT

Corporate Compliance

For Board of Directors

2024

Learning Objectives

- ▶ Be aware of corporate compliance requirements and how they apply to the Board of Directors of BABH, including:
 - Deficit Reduction Act of 2005 (Medicaid fraud/abuse elimination)
 - Michigan Medicaid False Claims Act (PA 72 of 1977, as amended by PA 337 of 2005)
 - Federal False Claims Act (31 U.S.C. §§ 3729–3733)
 - Michigan Whistleblowers Protection Act (PA 469 of 1980)
- ▶ Be familiar with fraud, abuse and conflict of interest
- ▶ Be aware of BABH standards of conduct related to fraud and abuse
- ▶ Know when to address compliance related concerns
- ▶ Be aware of the consequences of fraud or abuse

Program Integrity Requirements

BABH is required by the Federal and State governments to comply with 'Program Integrity' requirements when providing services funded by Medicare, Medicaid, or any other federal/ state healthcare program

- ▶ The program must include:
 - Compliance Committees for staff/ leadership and the Board of Directors
 - Designated Compliance Officer
 - Lines of communication
 - Monitoring and auditing
 - Compliance risk assessment
 - A training program

- ▶ BABH must also have standards of conduct and disciplinary standards as defined in the BABH Employee Handbook

Program Integrity: Role of the Board of Directors

- ▶ Review and approve the Corporate Compliance Plan
- ▶ Set policies for the corporate compliance program as required by federal and state regulations
- ▶ Approve priorities for the program based upon organizational risk tolerance and the legislative, regulatory and financial environment
- ▶ Receive and review reports of compliance activity
- ▶ Provide policy-level guidance for response to significant program integrity inquiries such as the Office of Inspector General

Program Integrity: Role of the Board of Directors

- ▶ Approve the use of resources to ensure an adequate program, e.g.:
 - ▶ Engagement of consultants and legal advisors;
 - ▶ Specialized training for personnel as needed; and
 - ▶ Subscriptions to industry publications
- ▶ Provide support by understanding:
 - ▶ BABH must adhere to extensive federal and state regulations
 - ▶ The Corporate Compliance Officer must have direct access to the Board of Directors as necessary

If a BABH employee or contractor approaches you about corporate compliance policies or enforcement please support the program.

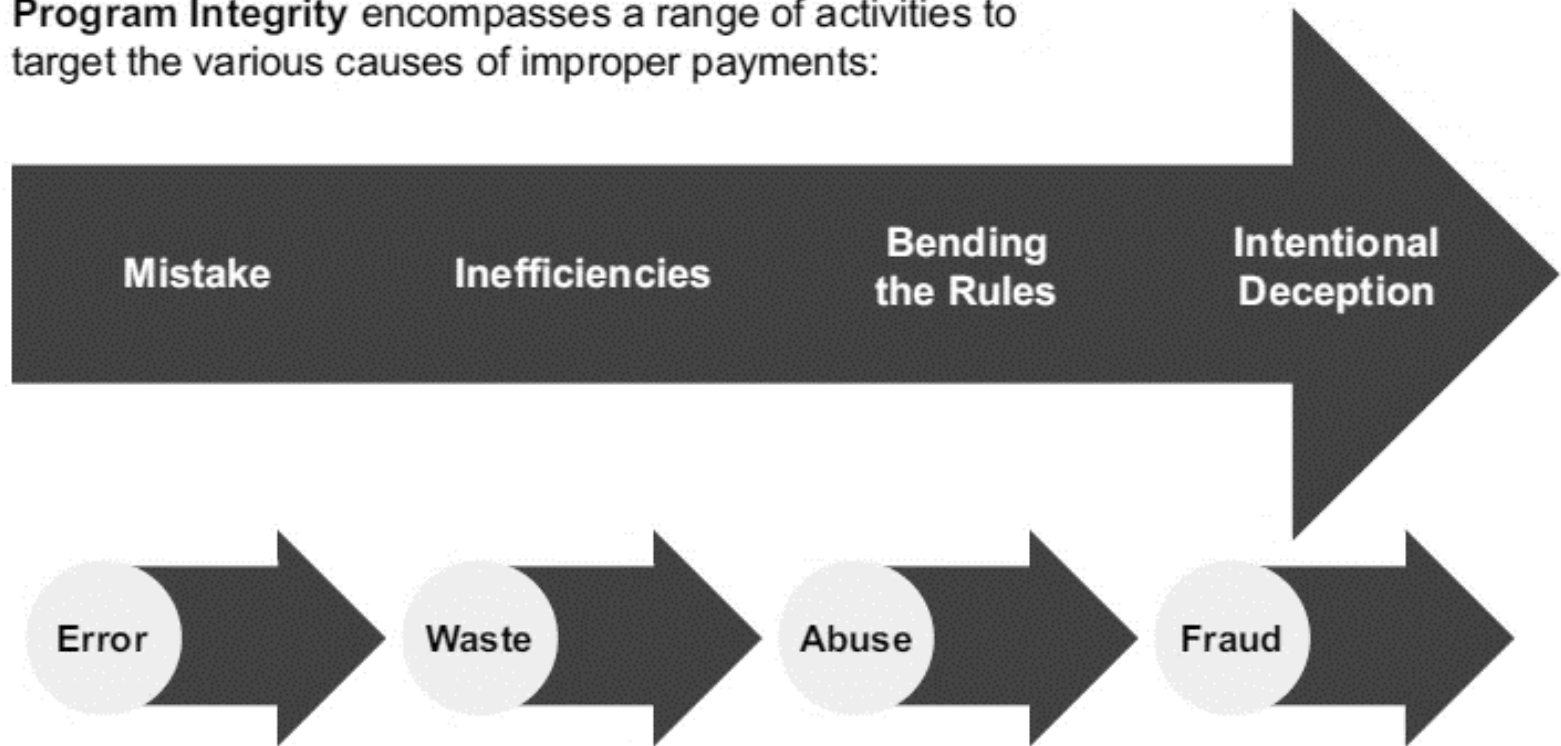
Standards of Conduct

- ▶ Board members are bound by the BABHA By-Laws, which include standards for:
 - Training
 - Documentation
 - Consequences for neglect of duty
 - Conflict of interest
 - Prohibited affiliations and/or exclusion or conviction
- ▶ Employees are bound by the Employee Handbook, which contains Standards Of Conduct. Employees can be disciplined for violations.

Errors, Waste, Fraud and Abuse

Figure 1. Types of Improper Payments

Program Integrity encompasses a range of activities to target the various causes of improper payments:



Q: What is Fraud?

Submitting false statements or making misrepresentations of fact to obtain healthcare payment for which no right would otherwise exist

Falsification or misrepresentation results in:

- Receipt of services for which the person is not entitled
- Receipt of payment for which the provider is not entitled

Not every error is 'fraud' – Please use this term thoughtfully

CAUTION

Q: What is Fraud? A: Falsification

- ▶ Qualifications
 - Falsifying a professional license, certification or registration
 - Practicing with a suspended license, certification or registration
- ▶ Medical Necessity
 - Falsifying assessments/evaluations, diagnoses or physician's orders
 - Prescribing medicines or ordering equipment for use by someone other than the person served
- ▶ Insurance/Funding
 - Falsifying records to bill for a person who does not have coverage
 - Providing services when excluded, suspended or debarred from Medicaid/Medicare

Q: What is Fraud? A: Falsification

- ▶ Service Documentation
 - Creating false documentation for a service that was not actually provided
 - Lying about the conditions of service delivery (i.e., if face-to-face, date, location, etc.)
- ▶ Billing/Claims
 - Accepting kickbacks for referrals, or self-referral
 - Intentionally billing for a costlier service than performed (up-coding)

Q: What is Abuse?

Practices that either directly or indirectly, result in unnecessary costs to the Medicaid or Medicare programs

Negligence or poor practices result in:

- The person receiving more service than was medically necessary
- The provider receives more payment than they are entitled to

Abuse is taking too big of a “bite of the apple”

Q: What is Abuse? A: Unnecessary Costs

- ▶ Qualifications
 - Failing to maintain continuous license, certification or registration
- ▶ Medical Necessity
 - Continuing to provide services when assessments, diagnoses, physician's orders or test results which prove medical necessity have expired
 - Ordering/authorizing more service than actually needed
- ▶ Insurance/Funding
 - Billing Medicare/Medicaid for costs that are the responsibility of another payer (i.e., not coordinating benefits)
 - Not assessing ability to pay and not charging a consumer a required co-pay

Q: What is Abuse? A: Unnecessary Costs

▶ Service Documentation

- No service documentation for a service that was provided
- Service documentation does not describe the delivery of a service covered by Medicaid

▶ Billing/Claims

- Billing services which were not authorized and/or are not in the plan of service
- Rounding up time, units or mileage to increase reimbursement for services
- Including unallowed costs when billing a service provided, such as transportation or staff travel time

Board of Director By-Laws – Conflict Of Interest

“Board members are expected to recuse themselves from any question or action under consideration in which he/she has a direct personal pecuniary interest not common to other members of the Board”.



pecuniary adjective

pe-cu-ni-ary | \ pi- 'kyū-nē-, er-ē \

Definition of *pecuniary*

- 1** : consisting of or measured in money
// pecuniary aid
// pecuniary gifts
- 2** : of or relating to money
// pecuniary needs
// pecuniary rewards

Board members must avoid referring business to or voting for approval of contracts with service providers in which they or an immediate family member have a financial interest

Sources of Conflicts Of Interest

- ▶ Family relationships
 - Family members on staff
- ▶ Personal business relationships
 - Hiring contracts of BABH to perform work on your home
 - Having a consumer work for you to earn money
- ▶ Professional business relationships
 - Accepting a job from a vendor bidding on a BABH contract
 - Co-owning a business with a contractor or consumer of BABH

Do not accept substantial gifts or those with "strings attached" from any person or organization, particularly contractors of BABH

Consumer-run micro-enterprises or businesses which are open to the public are OK

Board of Director By-Laws – Conflict Of Interest

“If a Board member is an employee or independent contractor with an agency with which the Board is considering entering into a contract, the following criteria must be met:

- 1. The Board member promptly discloses their interest in the contract to the Board;*
- 2. The contract must be approved by a vote of at least 2/3 of the membership of the Board excluding the vote of the Board member in question; and*
- 3. The official minutes of the meeting approving the contract must note the contract details including, but not limited to, names of all parties and the terms of the contract and the nature of the Board member’s conflict of interest.”*

Federal Laws – Conflict of Interest

- ▶ Physician Self-Referral (Stark) Law:
 - Prohibits physicians from referring patients to receive certain health services from providers with whom the physician or an immediate family member has a financial relationship
 - Includes ownership/investment interests and compensation arrangements
- ▶ Applies to many health care services including:
 - ▶ Lab services
 - ▶ Medical equipment and supplies
 - ▶ Prescription drugs
- ▶ **Proof of intent is not required**

Federal Laws – Conflict of Interest

- ▶ Anti-Kickback Statute
 - A criminal law prohibiting “knowingly soliciting, paying and/or accepting compensation to induce or reward referrals for items or services” payable by Medicare or Medicaid
- ▶ Compensation includes anything of value – cash, hotel stays, meals, etc.
- ▶ Applies to the Board of Directors
- ▶ **Requires proof of intent**

The Statute can be violated even though you would have made the same decision w/out a kickback

Consequences of Fraud and Abuse

- ▶ Federal and state False Claims Acts establish liability for submitting false or fraudulent claims
 - Fines up to \$23,331 (in 2020); may include fines of up to three times the value of the claim, ***for each item or service billed***
 - Imprisonment may be imposed
 - Individuals and organizations have liability for false claims if they knew or should have known their claim was false or fraudulent

Deliberately ignoring inaccuracies in claims or recklessly disregarding the truth does not void liability

Consequences of Fraud and Abuse

- ▶ Violations of Anti-Kickback Statutes can result in false claims liability and:
 - Criminal: Fines up to \$25,000 per violation; Up to a 5-year prison term per violation;
 - Civil/Administrative: Potential \$50,000 penalty per violation; civil assessment of up to three times amount of kickback
- ▶ Violations of Physician Self-Referral Laws can result in false claims liability and:
 - Civil: Overpayment/refund obligation; Potential \$15,000 penalty for each service; assessment of up to three times the amount claimed

A MESSAGE FROM THE FEDERAL
GOVERNMENT:
VIOLATORS WILL BE PROSECUTED!

Board of Director By-Laws – Prohibited Affiliations and/or Exclusion or Conviction

The Authority will not knowingly hire or engage an individual, or other entity, or an affiliate who is suspended or excluded from participating in, or who is under sanctions by, any federal or state health care program, including without limitations Medicare or Medicaid, or debarred from any procurement activities under applicable Federal Acquisition Regulations or non-procurement activities under the regulations issued under Executive Order No 12549, nor shall it have such an individual on its governing board.

The Board members shall annually complete attestation forms and are responsible for disclosing any prohibited affiliations, exclusions or convictions to administration when they arise.

Exclusion and Debarment

- ▶ Individuals convicted of fraud, abuse, kickbacks, self-referral or other violations/crimes may be excluded by the state or federal gov't from being a Medicaid and/or Medicare provider
- ▶ BABH Board members must be checked upon the start of their term and monthly thereafter against state and federal exclusion/debarment listings, per federal law
- ▶ A past or new criminal conviction can result in debarment/exclusion

BABH is not allowed to pay for “items or services which involve directly or indirectly, in whole or in part, individuals or entities excluded or debarred from participation in state or federal health care programs or federal procurement”

Disciplinary Guidelines for Employees and Contracted Service Providers

- ▶ Substantiated fraud/abuse by employees is subject to disciplinary action up to and including discharge
 - Discipline may also be applied to employees and supervisors who facilitated or ignored fraud or abuse by others
- ▶ Contracted service providers engaging in fraudulent or abusive practices are subject to adverse contract action, up to and including financial penalties and contract termination

Board of Director By-Laws - Removals

- ▶ *Any Director of the Authority may be removed by the appointing Authority for:*
 - *Neglect of duty;*
 - *Misconduct; or*
 - *Malfeasance in office*
- ▶ *After being given a written statement of charges and an opportunity to be heard thereon.*

Whistleblower Protections

- ▶ Board members who report are protected from retaliation by state and federal Whistleblower protections acts
- ▶ Federal Whistleblower provisions allow a private individual or entity with knowledge of past or present fraud committed against the Federal government, to 'file a suit'
- ▶ It allows a reward of a portion of the funds recovered (typically between 15 to 25 percent) in compensation for the risk and effort of filing a suit

Whistleblower Protections

In 1986, Congress added the following anti-retaliation protections to the False Claims Act:

- ▶ “Any employee who is discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of his employer or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole.”

Whistleblower Protections

- ▶ Michigan Whistleblowers' Protection Act (469 P .A. 1980) creates protections and obligations for employees and employers under Michigan law
- ▶ It is illegal for employers to discharge, threaten or otherwise discriminate against you regarding your compensation, terms, conditions, location or privileges of employment because you or a person acting on your behalf reports or is about to report a violation or a suspected violation of federal, state or local laws, rules or regulations to a public body
- ▶ It is illegal for employers to discharge, threaten or otherwise discriminate against you regarding your compensation, terms, conditions, location or privileges of employment because you take part in a public hearing, investigation, inquiry or court action

Summary of Program Integrity Expectations for Members of the Board of Directors

- ▶ Fulfill the Board's role in the BABH Corporate Compliance program
- ▶ Watch for and address any personal and/or professional conflict of interest that could:
 - ▶ Impair your ability to fulfill your duties as a Director of the agency, in particular making unbiased business decisions for the agency and not profiting personally from such decisions
 - ▶ Raise questions about the integrity of any BABH business transactions

Summary of Program Integrity Expectations for Members of the Board of Directors

- ▶ Members of the Board of Directors must report within two business days of discovery, any knowledge of fraud and/or abuse to the:
 - ▶ Chair of the Board of Directors OR
 - ▶ Chief Executive Officer OR
 - ▶ Corporate Compliance Officer
- ▶ Report immediately any criminal convictions that could lead to exclusion or debarment

Corporate Compliance Lines of Communication

Karen Amon, Corporate Compliance Officer

(989) 895-2214

kamon@babha.org

Corporate Compliance Hotline

1-800-243-7483

If you wish your call to be anonymous, do not call the Hotline from a phone where your phone number will be displayed