

**BAY-ARENAC BEHAVIORAL HEALTH AUTHORITY
POLICIES AND PROCEDURES MANUAL**

Chapter: 13	Corporate Compliance		
Section: 02	Administrative and Operational Practices		
Topic: 23	Self-Referral, Kickbacks and Related Conflict of Interest		
Page: 1 of 6	Supersedes Date: Pol: Proc: 8-1-17	Approval Date: Pol: 8-1-17 Proc: 9-21-2021	_____ <i>Board Chairperson Signature</i> _____ <i>Chief Executive Officer Signature</i>
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Policy

It is the policy of Bay-Arenac Behavioral Health Authority (BABHA) to prohibit physician self-referral, prevent the receipt of kickbacks and safeguard against related conflicts of interest, relative to state and federal health care programs.

Purpose

This policy and procedure is established/developed/created to ensure BABH complies with federal laws and regulations regarding physician self-referral and kickbacks involving federal and state healthcare programs. This policy and procedure does not apply to contracts that are not greater than \$100,000, per 41 USC 8701-8707 (Anti-Kickback Act).

Education Applies to:

- All BABHA Staff
- Selected BABHA Staff, as follows:
- All Contracted Providers: Policy Only Policy and Procedure
- Selected Contracted Providers, as follows:
 - Policy Only Policy and Procedure
- Other:

Definitions

Designated Health Services: Certain health services are designated by the federal government as relevant to the Stark Law; these include clinical laboratory services; physical therapy services; occupational therapy services; speech-language pathology services; radiology services; durable medical equipment and supplies; outpatient prescription drugs; and inpatient and outpatient hospitalization services

Federal Government Contract: A contract or contractual action entered into by the federal government to obtain supplies, materials, equipment or services of any kind.

Federal Health Care Funds: Medicare funds, the Federal Financial Participation (or FFP) portion of Medicaid funds, and Medicaid Expansion funds.

Financial Relationship: With certain exceptions as defined in federal law, generally an ownership or investment interest in an entity or a compensation arrangement between a physician (or immediate family member of the physician) and an entity, through equity, debt or other means

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and including an interest in an entity that holds an ownership or investment interest in any entity providing the designated health service.

Kickback: Any money, fee commission, credit, gift, gratuity, thing of value, or compensation of any kind that is provided to a contractor to improperly obtain or reward favorable treatment in connection with any federal government contract.

Physicians: Per 42 USC 1395nn Physician Self-Referral Law, a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which he performs such function or action; (other physicians not relevant to behavioral health, such as dentists are included; physician assistants and nurse practitioners are not identified in the Code).

Procedure

1) Conflict of Interest

- a) A present or former employee or contracted service provider of BABHA who is acting or has acted for or on behalf of BABHA, or is advising BABHA, and by virtue of that relationship has or had access to contractor bid or proposal or vendor selection information may not knowingly disclose contractor bid or proposal information or source selection information before the award of a contract involved federal or state healthcare funds.
- b) .
- c) Federal Consequences for Violations of Conflict of Interest Prohibitions
 - i. An employee or contracted service providers of BABHA who exchanges information for anything of value (as described in item 1)a) above) or to obtain or give a person a competitive advantage in the award of a BABHA procurement contract may be subject to:
 1. Criminal penalties in the form of fines, imprisonment for not more than five years or both;
 2. Civil penalties, including penalties of not more than \$50,000 for each violation plus twice the amount of compensation that the individual received or offered for the prohibited conduct, or in the case of an organization, penalties of not more

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than \$500,000 for each violation, plus twice the amount of compensation that the organization received or was offered for the prohibited conduct.

2) Physician Self-Referral

- a) With certain exceptions as articulated in the federal law, generally if a physician (or an immediate family member of such physician) has a financial relationship with an entity:
 - i. The physician may not make a referral to the entity for the furnishing of a designated health service for which payment otherwise may be made by federal health care funds; and
 - ii. The entity may not present or cause to be presented a claim or bill for federal health care funds for designated health services furnished pursuant to a referral.
- b) Federal Consequences of Violations of Physician Self-Referral Laws
 - i. Denial of payment;
 - ii. Refunding of any payments received in violation of the Physician Self-Referral Law;
 - iii. Civil monetary penalties of not more than \$15,000 for each service improperly claimed;
 - iv. Civil monetary penalties of not more than \$100,000 for each arrangement or scheme, such as cross-referrals, which the physician or entity knows or should know has a purpose of assuring referrals by the physician to a particular entity, which if the physician directly made referrals to the entity would be in violation of the self-referral law;
 - v. Civil monetary penalties of not more than \$10,000 for each day for which reporting was required to have been made;
 - vi. (civil) False Claims Act liability; and
 - vii. Exclusion from participation in Medicare.

3) Kickbacks

- a) In accordance with federal law, a BABHA employee or contracted service provider involved with a federal government contract may not:

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- i. Provide, attempt to provide, or offer to provide a kickback;
 - ii. Solicit, accept or attempt to accept a kickback; or
 - iii. Include the amount of a kickback in a contract price.
- b) Federal Consequences of Violations of Anti-Kickback Laws
- i. Under federal law, violators of the Anti-Kickback Act are subject to:
 - 1. Withholding of payments;
 - 2. Civil penalties of twice the amount of each kickback involved in the violation;
 - 3. Additional penalties of not more than \$10,000 for each occurrence of prohibited conduct; and
 - 4. If knowingly and willfully engaging in the kickback, fines, imprisonment for not more than 10 years or both.
 - ii. Further, illegal remunerations under federal laws subject whoever knowingly and willfully solicits or receives, any remuneration directly or indirectly, overtly or covertly, in cash or in-kind, in return for referring an individual for the furnishing or arranging the furnishing of any item or service for which payment may be made in whole or in part under a federal health care program, or in return for leasing, ordering, or arranging or recommending purchasing, leasing or ordering any good, facility, service or item for which payment may be made in whole or in part under a federal health care program to:
 - 1. Felony charges;
 - 2. Fines of not more than \$25,000; and/or
 - 3. Imprisonment for not more than five years.
- 4) Other Consequences for Violations
- a) Any BABHA employee who engages in the prohibited conduct addressed in this policy and procedure may be subject to disciplinary action up to and including possible discharge (based upon the severity of the incident(s)), in accordance with BABHA human resources policies and procedures.

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- b) A contracted service provider who engages in the prohibited conduct addressed in this policy and procedure may be subject to adverse contract action up to and including possible contract termination (based upon the severity of the incident(s)), in accordance with BABHA contract management policies and procedures.

5) Reporting

- a) Physicians and entities with financial relationships who are providing covered items or services for which federal health care funds may be paid or claimed by BABHA must report the existence and nature of the financial relationship(s) to the BABH Corporate Compliance Office and Chief Financial Officer before the service is provided and payment is made.
 - i. The federal government’s Self-Referral Disclosure Protocol must also be followed for potential or actual Stark Law violations involving Medicare funds.
- b) A BABHA employee or contracted service provider that has reasonable grounds to believe that a violation of the federal laws addressed in this policy and procedure has occurred must promptly report the possible violation in writing to their supervisor, the Director of Human Resources if a BABHA employee is involved, and the BABHA Corporate Compliance Officer.
- c) The BABHA Corporate Compliance Officer will inform the Chief Executive Officer and the Chief Financial Officer. BABHA will also report to the regional PIHP and the Michigan Office of Health Services Inspector General if state health care programs are involved.
- d) If a professional who is licensed or registered by the State of Michigan engages in the prohibited conduct addressed in this policy and procedure, it will be reported by BABHA to the MI Office of Licensing and Regulatory Affairs (LARA).

Attachments

N/A

Related Forms

N/A

Related Materials

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Centers for Medicare and Medicaid Services Self-Referral Disclosure Protocol, located at:
https://www.cms.gov/medicare/fraud-and-abuse/physicianselfreferral/self_referral_disclosure_protocol.html

References/Legal Authority

- 42 CFR 438.58 Conflict of Interest Safeguards (Managed Care Rules)
- 41 USC 2102 (formerly 41 USC 423) Prohibitions on Disclosing and Obtaining Procurement Information
- 41 USC 8701-8707 Anti-Kickback Act (formerly 41 USC 51-58)
- 42 USC 1395nn Physician Self-Referral Law (i.e., the Stark Law)
- 42 USC 1320a-7b. Criminal Penalties for Acts Involving Federal Health Care Programs
- (Civil) False Claims Act, 31 USC 3729-3733

SUBMISSION FORM				
AUTHOR/ REVIEWER	APPROVING BODY/ COMMITTEE/ SUPERVISOR	APPROVAL/ REVIEW DATE	ACTION (Deletion, New, No Changes, Replacement or Revision)	REASON FOR ACTION If replacement, list policy to be replaced
J. Pinter; Corp Comp Committee	Strategic Leadership Team	08-01-17	New	To comply with federal regulations regarding conflict of interest and personal gain
J. Pinter	Corporate Compliance Committee	09/21/21	Revised	Triennial review-Reviewed with minor updates.