



UB | MD Compliance Plan

2012

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I. INTRODUCTION

The FPMP Governing Board, UBMD Management Council, and affiliated university faculty practice corporations (collectively, “UBMD”) is committed to the very highest standards of ethics and integrity. The environment in which we deliver health care continues to rapidly evolve and become increasingly complex. As such, we have developed this Compliance Plan in an effort to assist our employees to conduct themselves in a manner consistent with the spirit and the letter of the laws, rules, and regulations that apply to this very highly regulated environment. All of our employees are strongly encouraged to use this Compliance Plan as a tool to guide them in the activities and services they perform each day on behalf of UBMD.

The FPMP Governing Board and UBMD Management Council fully endorse this Compliance Plan and support the efforts of all of our employees as they continue to promote a culture of compliance and ethics.

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President, UBMD Management Council
Approved by Management Council: 2/13/12

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President, FPMP Governing Board
Approved by Governing Board: 6/4/12

II. ORGANIZATIONAL CHART & CONTACT INFORMATION

Faculty Practice Management Plan Governing Board



UBMD Management Council



UBMD affiliated university faculty practice corporations

University at Buffalo Anesthesiology, Inc.
University Emergency Medical Services, Inc.
UB Family Medicine, Inc.
University Gynecologists & Obstetricians, Inc.
Academic Medicine Services, Inc.
University Neurology, Inc.
University at Buffalo Neurosurgery, Inc.
University Nuclear Medicine, Inc.
University Ophthalmology Services, Inc.
University Orthopaedic Services, Inc.
University at Buffalo Otolaryngology, Inc.
University at Buffalo Pathology, Inc.
University at Buffalo Pediatric Associates, Inc.
University Psychiatric Practice, Inc.
University Radiology at Buffalo, Inc.
University at Buffalo Surgeons, Inc.
University Urology, Inc.

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III. ELEMENTS OF AN EFFECTIVE COMPLIANCE PLAN

The Department of Health and Human Services, Office of Inspector General (“OIG”) has stated that every effective compliance program should begin with a formal commitment by the physician practice to address all of the applicable elements listed below, which are based on upon the seven steps of the Federal Sentencing Guidelines as well as the guidelines set forth by the New York State Office of Medicaid Inspector General:

A. Code of Conduct and Written Policies and Procedures

Compliance standards should be established through the development of a code of conduct and written policies and procedures. Such policies and procedures shall describe compliance expectations, implement the operation of the compliance program, provide guidance to employees and others on dealing with potential compliance issues, identify how to communicate compliance issues to appropriate compliance personnel and describe how potential compliance problems are investigated and resolved.

B. Designated Compliance Officer

An employee that is vested with responsibility for the day-to-day operation of the compliance program should be appointed. Such employee's duties may solely relate to compliance or may be combined with other duties so long as compliance responsibilities are satisfactorily carried out. Such employee shall report directly to the president or other senior administrator and shall periodically report directly to the Management Council and FPMP Governing Board on the activities of the compliance program.

C. Training & Education

All UBMD employees and applicable contractors, including executives and governing body members, shall be trained on compliance issues, expectations, and the compliance program operation. Such training shall occur periodically and shall be made a part of the orientation for all new employees and governing board members.

D. Internal Monitoring & Auditing

A system shall be in place for routine identification of compliance risk areas specific to UBMD, for self-evaluation of such risk areas, including internal audits, and, as appropriate, external audits, and for the evaluation of potential or actual non-compliance as a result of such self-evaluations and audits.

E. Communication

Communication lines to the compliance officer shall be in place and accessible to all employees, persons associated with UBMD, executives and governing body members, to allow compliance issues to be reported. Such communication lines shall include a method for anonymous and confidential good faith reporting of potential compliance issues as they are identified.

F. Enforcement of Disciplinary Standards

Considerable effort has been made in the development of UBMD's Compliance Office, which is charged with the responsibility of responding to allegations of improper activities. The Code of Conduct (Part IV) and other Policies (Part V) within this Compliance Plan have been established to ensure UBMD employees are aware that Compliance shall be treated seriously, and that violations and non-compliance shall be dealt with fairly, consistently and uniformly.

G. Responding to Detected Violations

Reasonable and prompt steps shall be taken to respond to all violations detected through audits and monitoring, and those that are reported by individuals. Implementation of a corrective action plan shall take place for any violations confirmed by an investigation.

H. Non-intimidation and Non-retaliation Policy

Retaliation for reporting compliance concerns in good faith will not be tolerated regardless of whether or not a violation is found as a result of the initial report. Reports of retaliation shall be investigated thoroughly, and can result in disciplinary action up to and including termination of employment.

This policy includes but is not limited to reporting potential issues, investigating issues, self-evaluations, audits and remedial actions, and reporting to appropriate officials as provided in sections 740 and 741 of the New York State Labor Law (whistleblower provisions for health care fraud).

IV. CODE OF CONDUCT

UBMD is committed to providing quality health care services in compliance with all applicable laws and regulations. This Code of Conduct is a statement of UBMD's dedication to upholding the ethical, professional and legal standards we use as a basis for our daily and long term decisions and actions.

A. Compliance with Laws, Regulations, Policies and Procedures

All UBMD employees must understand and comply with all relevant policies, laws and regulations, and are individually and collectively responsible and accountable for upholding these standards of compliance. Supervisors and compliance coordinators are responsible for teaching and monitoring compliance, with the guidance and oversight of the UBMD Compliance Office.

B. Patient Referrals

Relationships with other providers must comply with all applicable laws. Patient referrals are to be made and accepted based on medical needs only. No UBMD employee should ever accept or offer any type of payment or compensation in exchange for patient referrals, patient consultations or the purchase of services to a hospital or other facility. Any such offers should immediately be reported to a supervisor, compliance coordinator, or the UBMD Compliance Officer.

C. Claims for Reimbursement

UBMD will only submit claims for reimbursement for services that were provided, documented in the medical record, and medically necessary. Reimbursement claims should never contain false or misleading information.

If an employee becomes aware of a situation in which a false claim has been made or submitted, that employee must report it immediately to a supervisor, compliance coordinator or the UBMD Compliance Officer.

It is a federal crime, in violation of the Federal False Claims Act, to knowingly submit false claims to Medicare, Medicaid or any healthcare benefit program. All billing activities, therefore, are subject to the federal criminal and civil sanctions, regardless of payer.

D. Confidential Information

Many UBMD employees have access to various forms of sensitive and confidential information in regards to patients and co-workers. Any and all confidential and protected health information obtained either during the course of assigned duties or accidentally should not be released or discussed with anyone unless the individual is authorized to receive the information. UBMD prohibits the unauthorized seeking, disclosing or selling of such information. Thus, employees should not seek access to confidential information out of curiosity, for malicious purposes or for financial gain.

E. Conflict of Interest

UBMD employees are prohibited from engaging in any activity, practice or act of financial interest that conflicts with or appears to conflict with the interests of UBMD or any professional setting where the employee engages in the practice of medicine. A conflict of interest may occur if an employee's outside activities or personal interests influence or appear to influence his or her ability to make objective decisions on the job. A conflict of interest may also exist if the demands of outside activities hinder or distract the employee from the performance of his or her job or cause the employee to use UBMD resources for purposes not related to UBMD business. Therefore, employees should avoid any actions that might lead someone to believe there is a conflict of interest. Questions regarding conflicts of interest should be directed to a supervisor, compliance coordinator or the UBMD Compliance Officer.

F. Business Information and Relationships

1. Acceptance of Business Courtesies

UBMD employees may not solicit or accept gifts or gratuities from individuals or business organizations. Such action may appear to influence objectivity in performing our work, or give the appearance of providing personal gain or showing favoritism to an individual and/or current or potential business partner. If a situation arises which conflicts with this policy, contact your supervisor or the Compliance Officer immediately.

Under certain circumstances, cash and non-cash gifts may be received through appropriate channels, eliminating the risk of compromising our organizational integrity.

2. Competitor Information

UBMD employees shall not obtain proprietary or confidential information about a competitor through illegal or unethical means. Information may be gathered about other organizations, including our competitors, through legal and ethical means, such as public documents and other published and spoken information.

3. Contract Negotiation

UBMD employees will comply with all applicable disclosure rules and regulations honestly and completely. Employees involved in the negotiation of a contract must ensure that all the data generated, supplied and represented is accurate, current and complete. Failure to follow these guidelines may result in civil or criminal liability for UBMD, the involved employee and any managers or supervisors who condone such a practice. UBMD employees shall not contract to obtain services or products from an individual or company that has been convicted of a criminal offense related to health care and/or is listed by a federal agency as debarred, excluded or otherwise ineligible for participation in federally funded health care programs.

G. Violations

Confirmed violations of this Code of Conduct will result in appropriate disciplinary action against the offending individual(s), up to and including termination from employment.

V. POLICIES

A. Education & Training

Government and third-party payer laws, rules and regulations are continuously changing. As such, an ongoing, effective education and training program is vital to the UBMD Compliance Plan, ensuring that all employees – faculty physicians, residents, and all staff members – have open communication with the UBMD Compliance Office, and a full understanding of how the Compliance Plan and laws apply to them. Understanding and adhering to the Compliance Plan will result in fewer possible compliance discrepancies, thus protecting UBMD from internal and external exposure.

1. Mandatory New Hire Training

Within six months of commencement of employment within UBMD, all new employees must attend a one-hour compliance orientation and training session with the UBMD Compliance Officer or his/her designee. This session will include a full review of the UBMD Compliance Plan, Medicare documentation and billing requirements, and an opportunity for questions and answers. Failure of a new employee to attend this session may result in a delay in the payment of an individual's salary and/or fringe benefits.

2. Mandatory Annual Training

All UBMD physicians and physician extenders are required to complete a minimum of two (2) hours of compliance training biannually. This training may include, without limitation:

- a. One-on-one educational sessions with your internal chart auditor;
- b. Small group sessions with internal chart auditors, the UBMD Compliance Officer, or his or her designee;
- c. Classes or seminars presented by the UBMD Compliance Officer;
- d. Documented review of the quarterly UBMD Compliance Newsletter and satisfactory completion of accompanying quiz (15 minutes credit per issue reviewed);
- e. Presentations made by outside consultants or medical billing specialists, subject to the approval of the UBMD Compliance Officer;
- f. Off-site conferences and/or seminars covering healthcare compliance topics, subject to the approval of the UBMD Compliance Officer; or
- g. Computer-based compliance training programs;
- h. Personalized educational sessions provided by the Compliance Officer or his/her designee, as needed or requested.

Each clinical unit is responsible for maintaining documentation verifying physician attendance at all applicable educational sessions, and for forwarding all such documentation to the UBMD Compliance Office for review, ensuring adherence to this policy.

3. Other Educational Services

The UBMD Compliance Office will distribute an electronic newsletter at least four (4) times each year. This newsletter will contain pertinent legal and compliance-related updates, information, advice and tips. All UBMD employees

are strongly encouraged to read each newsletter and direct questions or ideas concerning the newsletter to the UBMD Compliance Office.

The UBMD Compliance Office will also maintain a compliance website (<http://ahc.buffalo.edu/compliance>) which will include reference materials including but not limited to: a copy of the UBMD Compliance Plan, past newsletters, PowerPoint training programs, and general compliance topics. UBMD employees are encouraged to use this website as an ongoing compliance learning tool.

The Compliance Officer is also available to provide personalized advice and to assist with day-to-day compliance related questions or concerns. He/she is qualified to address a wide range of compliance issues, and should be consulted whenever there is a need for compliance training or educational assistance. Consultations with the Compliance Officer in this regard may, in many instances, be credited toward a physician's 2-hour educational requirement.

B. Coding & Documentation

1. Overview

Medical coding identifies and classifies health information used in a physician's billing process so that a physician's payment is optimized, but not maximized. Proper documentation facilitates quality care and verifies the services that were provided. Complete and accurate documentation regarding the diagnosis and treatment in a patient's medical record is imperative.

The medical record of a patient may be used to validate site of service, appropriateness of the services provided, the accuracy of the billing, and identity of the health care provider who furnished the services.

All medical records generated by all UBMD physicians must be complete and legible, and include the following elements:

- Reason for the encounter/chief complaint
- Relevant patient history
- Physical examination findings
- Prior diagnostic test results
- Assessment, clinical impression or diagnosis
- Plan for care
- Date and legible identity of the observer
- Statement of rationale for ordering diagnostic tests and other ancillary services, if not documented and easily inferred by a third party reviewer with appropriate medical training
- Past and present diagnoses accessible to the treating and/or consulting physician
- Identification of appropriate health risk factors
- Statements of patient's progress, response to and changes in treatment, and revision of diagnosis
- Addendums to the medical record should be dated the day the information is added to the record and not for the date the service was provided.

CPT and ICD-9-CM codes reported on all reimbursement claim forms or billing statements should be adequately supported by the documentation in the medical record, and be submitted only in the name of the provider who performed the service.

While the above principles of documentation are applicable to all UBMD providers, it is the responsibility of the individual clinical units to implement any documentation guidelines specific to the nature and type of service they provide. The clinical units are responsible for orienting all of their employees – clinicians, coders, billers, administrative staff and auditors – to the documentation guidelines.

2. PATH Requirements

Payment for teaching physicians provided in teaching settings using physician fee schedule is permissible only if:

- Services are personally provided by physician, not resident;
- Teaching physician is physically present during key portions of the service that resident performs; or
- Teaching physician provides care under conditions outlined in “documentation” paragraph below.

For purposes of payment, E/M services billed by the teaching physician require that they personally document at least the following:

- Review of resident’s note;
- Confirm or edit of resident’s findings;
- Document performance or participation in key components;
- Summarize participation in the management of the patient; and
- Date, time, and signature on note.

Examples of correct wording:

- “I performed a history and physical examination of the patient and discussed his management with the resident. I reviewed the resident’s note and agree with the documented findings and plan of care.”
- “See resident’s note for details. I saw and evaluated the patient and agree with the resident’s findings and plans as written.”

Examples of unacceptable documentation:

- “Agree with above.”
- “Rounded, reviewed, agree.”
- “Discussed with resident. Agree.”
- “Patient seen and evaluated.”

Primary Care Exception – A graduate medical education program that has been granted a primary care exception may bill Medicare for lower and mid-level E/M services provided by residents.

- E/M codes new patient: 99201, 99202, 99203;

E/M codes established patient: 99211, 99212, 99213

- Residents providing billable patient care service without teaching physician supervision must have completed at least six (6) months of GME program
- Residency programs most likely to qualify for exception: family practice, general internal medicine, geriatric medicine, pediatrics, and obstetrics/gynecology

3. Non-Physician Practitioners

There are three (3) ways to bill for the services of non-physician practitioners ("NPP"):

- a. **Incident-to services** are billed under the M.D., paid at 100% of the M.D. fee schedule.
 - Private office, outpatient only. No hospital outpatients, inpatients, emergency department patients.
 - Follow-up/established patients only. No new patients.
 - Requires "direct supervision" by physician.
 - "Direct supervision" means the doctor must be present in the office suite, immediately available to provide service if needed.
 - NPP documents service in medical record; M.D. does not need to sign.
- b. **Direct billing** is billed under the NPP, paid at 85% of the M.D. fee schedule.
 - Not site-restricted; may be inpatient, outpatient, office, hospital, etc.
 - New or follow-up/established patient
 - Requires "general supervision" by M.D.
 - "General supervision" includes the attending physician's overall direction and control of the training and equipment, but the physician's presence is not required during the diagnostic procedure. The physician does not have to be present when the service is performed.
- c. **Shared billing** applies when NPP and M.D. are members of the same group, and the combined service is billed either under the NPP's or M.D.'s number.
 - Not site-restricted; may be inpatient, outpatient, office, hospital, etc.
 - E/M services only.
 - No critical care, no SNG, no procedures, no consultations
 - M.S. must provide face-to-face portion of the E/M encounter.
 - If incident-to requirements not met, then must bill under the NPP's number.

C. Electronic Medical Records

A medical record is created for every patient who receives treatment, care, or services and is maintained for the primary purpose of providing patient care. The record should contain sufficient information to: identify the patient, support the diagnosis (es), justify treatment and facilitate the continuity of patient care. Any electronic medical record system used must comply with all HIPAA privacy and security requirements.

1. **Providers are prohibited from allowing others to use their password or sign their notes.** Providers are responsible for the total content of their documentation and that of residents, medical students or any other ancillary personnel under their supervision whether the content is original, copied, pasted, imported or reused.
2. **The record should clearly identify the author and date of all entries.** Entries must be signed/authenticated by the author. Electronic signatures must be password protected and used only by the author. All entries should be signed promptly; allowing a short delay that occurs in the transcription process.
3. **Providers documenting in the EMR must avoid indiscriminately copying and pasting progress notes and duplicate/redundant information provided in other parts of the EMR.** If any information is copied or reused from a prior note, the provider is responsible for its accuracy and medical necessity. The primary purpose of progress notes is to provide an accurate depiction of unique treatment rendered a specific date of service. Further requirements pertaining to copying and pasting progress notes:
 - i. Copied information must be reconfirmed and revised as necessary to accurately reflect the specific date of service.
 - ii. It is not advisable to duplicate information that does not specifically impact a specific date of service.
 - iii. Copying of subjective data (i.e. history of present illness and plan of care) is strongly discouraged.
 - iv. Copying teaching physician attestations from previous notes is prohibited.
 - v. Information that is copied should not exceed six (6) months from the date of the original note.
 - vi. Information copied forward from the providers' original notes should be closely examined for accuracy, completeness and relevance.
 - vii. Documentation must reference the date of the original note.
Example: "Copied from my previous note dated..."
4. **Providers are responsible** for citing and summarizing applicable lab data, pathology, and radiology reports rather than copy such reports in their entirety in the notes.
5. **Providers are responsible** for correcting any errors identified within their own document, via a dated amendment if the note is already signed.
6. **Providers are required** to document in compliance with all federal, state and local laws as well as with FPMP policy.

Records will be retained as required in any federal, state, or local laws.

D. Audit & Monitoring

An ongoing audit program to monitor compliance with applicable laws and policies is integral to the UBMD Compliance Plan. The focus of UBMD's audit program is to assess the accuracy of documentation and coding of UBMD providers. The objectives of UBMD's accuracy monitoring are:

- To ensure accurate, complete and legible documentation of medical services provided;
- To ensure proper coding and billing based on the documentation;
- To determine whether or not any problem areas exist in documentation, coding or billing; and if so, to focus on improving those areas with the physician.

Routine chart review is required for each clinical unit to assess compliance with the established standards of practice and billing guidelines. Charts will be audited without regard to payer type. There are several types of audits that may be performed, including:

- 1. Periodic Audits** – Designed to identify deficiencies and inconsistencies in the documentation and billing process in order to develop strategies for improvement, including educational sessions. The internal auditor for each clinical unit will be responsible for annually reviewing the lesser of 2% of each providers' submitted claims, or 20 claims, unless a more stringent requirement is otherwise specified in the individual clinical unit compliance policies. It is recommended that each provider be audited twice each year.

If a provider's charts are found to be less than 70% compliant, the internal auditor will conduct an individual educational session and perform a follow-up audit within six weeks to evaluate the effectiveness of the education. Failure to improve compliance percentages may result in additional corrective action being taken as outlined in Part V, Section G of this Compliance Plan.

- 2. Investigational Audits** – Conducted by an internal auditor, UBMD's Compliance Officer, or his/her designee in response to issues or concerns that might arise within a clinical unit either by an employee or an outside source. The auditor will consult with the Compliance Officer or his/her designee and the clinical unit chief prior to conducting and unscheduled audit. For further information on internal investigations, see Part V, Section F of this Compliance Plan.
- 3. Parallel Audits** – May be conducted any time an outside agency such as the U.S. Attorney's Office, U.S. Department of Justice or the New York State Attorney General's Office initiates an investigation of a UBMD provider or clinical unit. These audits are intended to provide the UBMD Compliance Officer with information that may be helpful in defending or settling any charges that may arise from the outside investigation. For further information regarding governmental investigations, see Part V, Section I of this Compliance Plan.

- 4. Requested Audits** – Audits may be conducted at the request of the Compliance Officer at any time to ensure compliance with third party billing requirements and/or applicable fraud and abuse laws.

For the purposes of periodic audits, a minimum of twenty (20) records will be reviewed annually per provider. Each clinical unit shall be responsible for reporting internal audit results to the UBMD Compliance Officer twice each year, with a minimum of ten (10) records per provider each time. The audit reports shall be submitted on a form acceptable to the UBMD Compliance Officer following the first six months of the year and following the second six months of the year (due in July and January). Audit results will contain information such as number of encounters reviewed, the number of compliant and noncompliant records, review codes for noncompliance, and follow-up activities for tracking and educational purposes.

Additional records may be reviewed at the discretion of the UBMD Compliance Officer.

Periodic and follow-up audits will be conducted by internal auditors retained by the individual practice plans. **In the event a clinical unit does not retain an internal auditor, or if the internal auditor designated by the clinical unit fails to review a minimum of twenty (20) records per year per provider, then the Compliance Officer may choose to hire an auditor to fulfill such obligation, at the expense of the clinical unit in question.**

E. Reporting Misconduct

It is the responsibility and duty of all UBMD employees to immediately report any known or suspected misconduct, violations of law, or other wrongdoing, either to the UBMD Compliance Officer or to a supervisor or manager with the respective clinical unit.

1. Examples of Misconduct

- repeated instances of improper coding
- inadequate medical record documentation
- falsification or alteration of medical records
- harassment
- acceptance of bribes or other kickbacks
- unlawful attempts to induce referrals
- retaliation against someone who has made a previous report concerning a compliance violation

2. Procedure for Reporting Misconduct

All reports of known or suspected misconduct may be made anonymously by calling the UBMD Compliance Office at (716) 888-4705, or by communicating directly with clinical unit management or the UBMD Compliance Officer via phone, facsimile, e-mail, or U.S. Mail.

A report of misconduct alone does not automatically lead to the discipline of the subject of the report. For this reason, employees are encouraged to contact the UBMD Compliance Office to discuss or report situations even if the reporting individual is not certain that the situation in question rises to the level of noncompliance.

All reports of misconduct should include pertinent information including:

- The name of the individual and/or clinical unit about which the report is being made;
- A factual and objective description of the questionable practice, including date and time;
- If involving inappropriate billing, any information available regarding if/when claim was billed, amount billed, whether payment was received, what steps if any were taken to stop payment or refund payment;
- Medical records involved, identified by either patient name or number;
- Any other information deemed necessary for investigation.

Each report of misconduct will be followed up with an internal investigation in accordance with Part V, Section F of this Compliance Plan. If warranted following a complete investigation, corrective action may be imposed in accordance with Part V, Section G of this Compliance Plan.

Confidentiality of employee reports will be maintained at all times, to the extent practicable and legal. Only those personnel who have a need to know will be informed of the reports.

Failure or refusal to report misconduct or fraudulent or illegal practices is a violation of this Compliance Plan and may result in disciplinary action, including termination, of any individual who suspects misconduct but fails to report it.

F. Non-Retaliation

Employees who report compliance concerns in good faith, regardless of whether or not a violation is found to have occurred, shall not be subject to retaliation, retribution, or harassment.

Retaliation is a violation of this Compliance Plan, and will not be tolerated. Any reports of such retaliation, retribution, or harassment will be thoroughly investigated, and may result in disciplinary action, up to and including termination.

G. Internal Investigations

Upon receipt of an oral, written or electronic report of possible misconduct, an internal investigation will be conducted by the UBMD Compliance Officer or his/her designee. Internal investigations may also be generated by irregularities identified through routine chart audits, a threat of civil litigation, a potential governmental investigation, or receipt of a subpoena. Additionally, the UBMD Compliance Officer may, at the expense of the affected clinical unit, commence an internal investigation of any provider who has a compliance score of less than 50% on three consecutive chart audits.

Internal investigations are conducted to discover facts and circumstances surrounding alleged incidents of noncompliance, assess the legal significance of the facts discovered, evaluate the practice plan's legal rights and obligations in light of the factual conclusions reached, determine if there has been any wrongdoing, and stop any wrongdoing immediately.

Based on the findings of an internal investigation, the UBMD Compliance Officer will determine what action will be taken to correct any existing problem or potential problem. Any such action will be in accordance with Part V, Section G of this Compliance Plan.

At the conclusion of the investigation, the UBMD Compliance Officer or his/her designee will submit a report through the Compliance Committee to the UBMD Management Council along with the chief of the affected clinical unit, containing the following (if applicable):

1. Name of individual(s) being investigated;
2. Circumstances that led to the investigation;
3. Facts disclosed by the investigation;
4. List of individuals who were interviewed;
5. List of documents and records that were reviewed;
6. Internal policies, procedures, or practices that led to the violation or that could be improved;
7. The recommended course of action and options.

H. Corrective Action

As a means of facilitating the overall Compliance Plan goal of full compliance, corrective action will be recommended by the UBMD Compliance Officer if it is determined that a UBMD employee exhibits noncompliant behavior. Corrective actions plans will foremost be put in place to assist the noncompliant individual in understanding the issue at hand and reduce the likelihood of noncompliance in the future. However, corrective action will effectively address the issue of noncompliance, and will reflect the severity of the noncompliant action. A plan of correction may include, without limitation:

1. Requiring mandatory educational sessions for the noncompliant individual;
2. Increasing the number and frequency of chart audits;
3. Making a repayment or voluntary disclosure to appropriate third party payers;
4. Reporting violations to the appropriate authorities;
5. Retaining an auditor, at the clinical unit's expense, to conduct a prospective audit of each bill submitted under the provider's name until the problem has been resolved to the satisfaction of the UBMD Compliance Officer and/or the UBMD Management Council; or
6. Termination of employment.

Any expenses incurred as a result of the corrective action will be charged to the clinical unit for whom the noncompliant individual works.

The UBMD will recommend specific types of corrective action but no such corrective action will take effect without the written approval of the clinical unit

chief. If the proposed corrective action is to be imposed on the clinical unit chief, then the approval of the UBMD Management Council will be required in lieu of clinical unit chief approval.

I. Appeals

An aggrieved UBMD employee shall have the opportunity to appeal final recommendations made by the UBMD Compliance Officer which result in clinical unit chief determinations that noncompliance has occurred and requires corrective action. Any such appeal is exclusive of any other collective bargaining or statutory rights that may exist.

- a. Notice and Appeal – Upon receipt of a notice of an appealable decision, the aggrieved employee shall have fifteen (15) business days to appeal the decision to the UBMD Executive Committee. The appeal shall be made in writing, directed to the President of the Management Council. Written appeals not received by the Executive Committee within fifteen (15) business days shall be deemed untimely and will not be considered. The notice of appeal must contain a description of the relevant facts and a detailed explanation of the reason for the appeal.

Upon timely receipt, the appeal shall be considered at the next regularly scheduled Executive Committee meeting provided; however, a meeting of the Executive Committee may be called sooner if the facts warrant, or at the discretion of the President. In any event, a meeting of the Executive Committee shall be held within forty-five (45) business days of the Executive Committee's receipt of an appeal. Notice of the meeting date shall be timely provided to the appellant.

- b. Submission of Documentation and Appearance – At least three (3) business days prior to the meeting at which the appeal is to be considered, the appellant shall submit any and all documentation or materials supporting his/her appeal. The aggrieved faculty member and/or provider may also request the opportunity to appear and/or be accompanied by an advocate or consultant at the meeting to present his/her position on the matter. All requests to appear shall be granted.
- c. Executive Committee – A majority of the Executive Committee members, excluding any members in the same clinical unit of the appellant, shall constitute a quorum for the purpose of considering the appeal. No Executive Committee member who is a member of the appellant's clinical unit shall participate in the appeal as a member of the Executive Committee.
- d. Conduct of the Meeting – The Executive Committee shall consider all evidence before it when deciding an appeal. It may also request the presence of the appellant or witnesses at the meeting to answer questions and provide additional information. The Executive Committee may review the medical record, review reports, review investigation reports, interview witnesses, and take into consideration any other material deemed necessary to make a decision.

- e. The Record/Confidentiality – The record of the appeal, which is comprised of the meeting minutes and all of the evidence, shall be considered confidential information. However, the Executive Committee may, as appropriate, disclose it to the Vice President for Health Sciences, the Dean of the School of Medicine, and the chief of the clinical unit of which the appellant is a member. The record may also be disclosed to others upon the approval of legal counsel.
- f. Written Decision – Within thirty (30) business days of the conclusion of the hearing, a written decision shall be rendered by the Executive Committee and shall be promptly communicated to the appellant, along with the chief of the appellant's clinical unit.
- g. Further Action – The decision of the Executive Committee is final. Following the decision of the Executive Committee, the aggrieved person shall have no further right of appeal.

J. Governmental Investigations

The Health Insurance Portability and Accountability Act extended the reach of federal law to all "healthcare benefit programs" and provided the federal government with an array of healthcare crimes to investigate including:

- Healthcare fraud (18 U.S.C. § 1347);
- Theft or embezzlement in connection with healthcare (18 U.S.C. § 669);
- False statements relating to healthcare matters (18 U.S.C. § 1035); and
- Obstruction of criminal investigations of healthcare offenses (18 U.S.C. § 1518)

As such, UBMD is subject to announced and unannounced audits, surveys, and investigations by government agencies. Appropriate response to such authorized inquiries requires strict adherence to applicable laws and regulations.

Federal investigators may investigate fraud and abuse violations involving Medicare, Medicaid and other government-sponsored health plans such as worker's compensation, as well as all insurance reimbursements.

Investigators continue to concentrate on the traditional areas of fraud and abuse which have been successfully prosecuted in the past, including:

- Billing for services not rendered;
- Billing for services not medically necessary;
- Double billing for services provided;
- Upcoding (billing for a more highly reimbursed service or product than that which was provided); and
- Unlawful kickbacks and referrals.

All UBMD employees shall cooperate fully with appropriately authorized government investigations. When a government official arrives in the course of an investigation, the following steps must be followed:

- Obtain identification of individuals and review documents authorizing investigation;
- Request the purpose of the investigator's visit and specifically with whom the investigator desires to speak;
- Notify the UBMD Compliance Officer and clinical unit chief (or administrator on call) immediately, and inform the investigator the UBMD policy requires you to contact these people prior to allowing the investigation to begin;
- Assure full cooperation with investigators within the scope of the investigation;
- Remove all non-essential personnel from the area involved in the investigation;
- Suspend any routine destruction of records during the investigation;
- Maintain a log of all events associated with the investigation;
- Staff members have the right to speak to any investigator they so choose, and have the equal right to decline to be interviewed or to ask the investigator to schedule the interview at a later date.

VI. SUMMARY OF PERTINENT LAWS, RULES & REGULATIONS

UBMD employees shall work in compliance with all applicable laws, rules and regulations. Failure to do so may result in civil and/or criminal violations, leading to exclusion, monetary fines and/or imprisonment.

A. HIPAA

HIPAA is a federal law, with civil penalties of up to \$25,000 per year and criminal penalties that can reach up to \$250,000. UBMD has a separate, detailed set of privacy and security policies and procedures and all employees are directed to reference those policies and procedures for more comprehensive guidance on HIPAA.

The HIPAA Privacy Rule ensures the privacy of patient healthcare information, restricts the use and release of medical records, and gives patients more control over how that information is used. Providers are required to make a reasonable effort to protect patient privacy at all times. A patient's authorization is required before using or releasing Protected Health Information (PHI) for purposes other than treatment, payment, or operations.

The Privacy Rule holds healthcare providers accountable for privacy violations with serious penalties for non-compliance.

The HIPAA Security Rule ensures protection of electronic Patient Health Information (ePHI). The Security Rule provides administrative, physical and technical safeguards to be followed to protect confidentiality, integrity and availability of ePHI containing patient information such as name, address, social security number, billing information and physician notes.

Administrative safeguards include setting standards on who has authorization to access ePHI; employing systems to detect, correct and prevent breaches in security; setting policies and plans for handling violations and responding to emergencies or natural disasters; creating retrievable back-up systems off site; performing ongoing evaluations and audits to ensure compliance with the Security Rule.

Physical safeguards include the implementation of access controls which limit access of ePHI, such as regularly changing passwords, PIN numbers, unique user IDs, automatic log-off, and recognized restricted areas for computers and equipment.

Technical safeguards include software technology which is often put in place by IT experts, such as virus-checking software, encryption, digital signatures and internal monitoring and audit systems.

B. Stark Law

The Stark Law prohibits any physician from referring patients for the provision of "designated health services" to any entity with which the physician or an immediate family member has a financial relationship, unless a statutory exception applies.

“Designated health services” are any of the following:

1. Laboratory services
2. Physical therapy
3. Occupational therapy
4. Radiology
5. Radiation therapy
6. DME & supplies
7. Nutrients, equipment & supplies
8. Prosthetics, orthotics
9. Home health services
10. Outpatient prescriptions
11. Inpatient/outpatient hospital services

If a financial relationship exists, referrals are prohibited unless a specific exception is met for both the federal and state statutes. The federal and state exceptions differ in some cases; therefore, physicians are advised against relying on the exceptions without first consulting with the UBMD Compliance Officer and/or legal counsel.

C. Antikickback Statute

The Federal Antikickback Statute creates liability for offering, providing, accepting or soliciting anything of value in exchange for the referral of business that is paid for by the Medicare or Medicaid programs.

Examples of kickbacks include waiving deductibles and copayments for Medicare patients, paying a nurse practitioner or physician a fee for referring a patient, and accepting a fee for referring a patient.

The antikickback statute is a criminal statute and, therefore, includes jail time as one of its penalties. Providers and their employees are prohibited from accepting kickbacks in the course of business. Additionally, providers and their employees are required to contact legal counsel or the UBMD Compliance Officer before accepting a gift or any item of value relating to or arising from UBMD business, provider relationships or medical office operations.

D. False Claims Act

The False Claims Act is a Federal statute which prohibits health care providers from “knowingly” presenting, or causing to be presented, a false or fraudulent claim for payment or approval to any federally funded program, such as Medicare and Medicaid.

The term “knowingly” does not simply refer to a specific intent to defraud the federal government. To “knowingly” present a false claim means that the provider:

1. Has actual knowledge that the information on a claim is false;
2. Acts in deliberate ignorance of the truth or falsity of the information in a claim;
3. Acts in reckless disregard of the truth or falsity of the information in a claim.

Violations of the False Claims Act may result in monetary penalties equal to three times the government's damages plus civil penalties of \$5,500-\$11,000 per false claim. Criminal cases may include imprisonment. Health care providers may also be excluded from participation in federal health care programs.

E. Deficit Reduction Act of 2005

The Deficit Reduction Act of 2005 States that any employer who receives more than \$5 million per year in Medicaid payments is required to provide information to its employees about the federal False Claims Act, any applicable state False Claims Act, the rights of employees to be protected as whistleblowers, and the employer's policies and procedures for detecting and preventing fraud, waste and abuse.

VII. REVISIONS TO THE COMPLIANCE PLAN

The UBMD Compliance Plan will be maintained and updated on a regular basis. It may occasionally be necessary to amend the overall structure and/or content of this Plan. In order to ensure this Plan remains viable in an ever-changing regulatory environment, and that it remains geared toward maintaining certain high standards of practice, the following procedures shall be followed with respect to changes, modifications, revisions, or amendments herein.

A. Material Changes

The UBMD Management Council shall have exclusive authority for approving any changes to the Plan which would substantively affect the integrity of the Plan or would constitute a material change to the overall Plan. The Management Council on its own authority, or upon the recommendation of the Compliance Committee or Compliance Officer, shall be authorized to make material amendments, changes, modifications, or revisions to this Plan. Such revisions shall be approved upon a majority vote of the Management Council.

A material change is one which would result in a change to the Plan in its entirety, or which pertains to the power or authority of the Management Council, Compliance Officer, Compliance Committee, or revisions to any the elements of the Plan that are described in Part III. If it is unclear whether a proposed revision is material, the Management Council shall make the final determination.

B. Technical Changes

The Compliance Officer, upon notice to the Management Council, has the authority to make technical changes to the Plan which would not reduce, enlarge, or materially modify the authority of the Compliance Committee, the Compliance Officer, or the Management Council.

A technical change is one that is procedural in nature and has the effect of improving overall operational aspects of the Plan. Examples of technical changes include updating names or contact information and updating the Plan to reflect changes in applicable laws, rules, or regulations. A technical amendment to the Plan shall become effective upon receipt by the Management Council of notice from the Compliance Officer describing such changes.

