

# Medical Staff Education



**Hospital Sisters**  
HEALTH SYSTEM

**Compliance**

Health Laws to Remember

# Fraud & Abuse Laws

	False Claims Act	Anti-Kickback Statute	Stark Law
Prohibition	<p>Imposes liability on any person or company who knowingly submits, or causes to be submitted, a false claim to a government program.</p> <p>Included also is liability for those who knowingly possess an overpayment and do not refund it.</p>	<p>A criminal statute that prohibits the exchange (or offer to exchange), of anything of value, to induce (or reward) the referral of federal healthcare program business.</p>	<p>Prohibits a physician from making referrals for certain designated health services (DHS) payable by Medicare, to an entity which he/she (or an immediate family member) has a financial relationship (ownership, investment, or compensation), unless an exception applies.</p> <p>Prohibits the entity from presenting, or causing to be presented, claims to Medicare (or billing another individual, entity, or third-party payer) for those referred services.</p>
Exceptions	No exceptions	Voluntary Safe Harbors	Mandatory Exceptions
Applications	Any claim submitted to the federal government that submitter knows (or should know) is false	All federal programs	Medicare Only

# False Claims Act Violations

## Examples:

- Billing for services not provided
- Knowingly submitting inaccurate claims
- Billing under incorrect provider for higher reimbursement
- Up-coding services
- Duplicate billing
- Documentation does not support medical necessity requirements for coverage.

# Anti-Kickback Statute Violations

## Examples:

- Offering to waive co-payments on a routine basis in exchange for business.
- Free goods to patients to induce them to utilize you as a provider.
- Above or below market arrangements.
- Receiving a below market rental rate in exchange for referrals.
- Requesting a Medical Director contract in exchange for referrals.
- Receiving consulting fees, speaker's fees or gifts from device or drug manufacturers in exchange for ordering their products.

# Stark Law Violations

## Examples:

- Receiving free equipment from a hospital for your private clinic, which isn't spelled out under a lease or purchase arrangement.
- Starting to provide professional services to a hospital in exchange for payment, which is outlined in a written agreement but signed in advance.
- Receiving compensation which takes into account your ancillary order (referral) volumes to the hospital.

# Non-Monetary Compensation

Under federal Stark Law, a Hospital may provide compensation in the form of items or services to a (non-employed) physician or physician group, which:

- Do not exceed an aggregated amount per calendar year
  - CY2023 = \$489
  - Amount changes on an annual basis.
- Are **not** based on volume or value of referrals generated by a physician.
- Are **not** requested by the physician or physician group.
- EXCLUDES cash and cash equivalents (i.e., gift cards).

# Non-Monetary Compensation Examples

- Flowers
- Gift baskets
- Thank-you gifts
- Service appreciation
- Holiday, congratulatory or sympathy
- Meals (e.g. holiday meals, certain committee meals, etc.)
- Tickets to concerts or sporting events
- Staff events off-site (e.g. picnics, golf tournaments, business or CME dinners)



# EMTALA

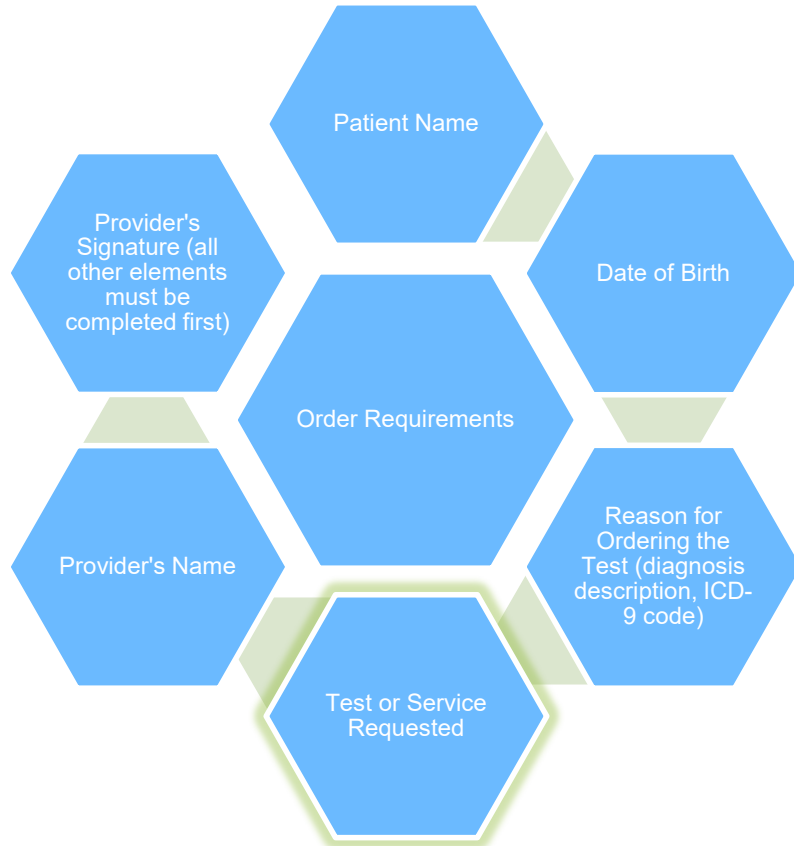
## Emergency Medical Treatment and Active Labor Act ("EMTALA"):

- Provides that anyone who comes to the Emergency Department and requests treatment for an emergency condition must receive a medical screening exam and appropriate stabilizing treatment or must be appropriately transferred.
- **No exceptions!**
  - Even if doesn't appear to be an emergency
  - Even if patient was recently seen
  - Even if the ED is very busy





# Orders Requirements



Computerized Physician Order Entry ("CPOE")	Written	Telephone	Verbal
Provider enters order into computer	Orders completed on paper	Orders communicated by provider via telephone	Verbal orders communicated face-to-face by the ordering provider
Provider provides electronic signature	Physically signed by a provider	Person receiving order must read it back and verify	Only be used to meet urgent care needs
	Cannot use pre-signed blank orders	Provider must sign the order within 72 hours (IL) and 48 hours (WI)	Person receiving order must read it back and verify
		Cannot be transcribed from a provider's note	Must be signed by the provider before they leave the area

# HIPAA Privacy

## *When is it okay to access an electronic medical record?*

- You may access a patient’s medical record for direct treatment purposes or consult request.
- You may access under the direction of a Medical Staff Committee (i.e. Peer Review, Quality), and/or as appropriate under Medical Director contract, if applicable.

Do	Don't
Access records of patients you are actively seeing in your clinic for continuity of care.	Access a patient record because you believe the case is interesting.
Use Mychart to access your medical record.	Access friends or family’s records unless you are on the treatment team.
Ask Questions if you are unsure.	Access records to conduct unofficial reviews of other providers. Peer review process must be followed.

# HIPAA Privacy Monitoring

## ACCESS MONITORING

- HSHS Hospitals utilize FairWarning software to actively monitor access to its electronic systems containing PHI. Examples of items that have been monitored through the system are:
  - Self-Access, Self-Modification, Household Access, Deceased Patient Access, Coworker Snooping, Persons of Interest and Access After Termination.
- The HSHS privacy team works with Medical Staff Services to determine if access is appropriate when necessary.

# Information Blocking

- Information blocking (21<sup>st</sup> Century Cures Act) prohibits us from acting in a way that is likely to interfere with access, exchange or use of electronic health information.
- This means providers must share notes and orders/results with patients unless there is a specific Information Blocking exception met.
- HSHS monitors compliance with Information Blocking rules through quarterly audits.

# Information Blocking Exceptions

**Patient Request**, means the patient requested *not* to have the note or order/result shared, and:

- The patient, without any improper encouragement or inducement, requests that the information not be shared.
- This request is documented at the time of service.
- The process for a patient to make the request is handled consistently and in a non-discriminatory manner.

# Information Blocking Exceptions

**Reasonable Likelihood of Causing Patient Harm**, means sharing the note or order/result could cause patient harm and:

- Determined on an individual basis in the exercise of professional judgement.
- Is based on the facts and circumstances known or reasonably believed at the time of the determination.
- You must hold a reasonable belief that the practice will substantially reduce the risk of harm to a patient or another natural person.
- The block must be no broader than necessary.
- Must be implemented in a consistent manner.

# Information Blocking Exceptions

It is illegal to share the note or order/result, means there is an applicable state or federal law that requires one or more preconditions be met prior to sharing the EHI, and one or more of the preconditions has not been met (i.e., Substance Use Disorder Treatment records subject to Part 2 requirements; psychotherapy notes; or Court Order).

- *Psychotherapy notes* means notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individual's medical record. Psychotherapy notes excludes medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: Diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.

# Additional Resources

- The Office of Inspector General issued Compliance Program Guidance for Individual and Small Group Physician Practices that can be located online at: <https://oig.hhs.gov/documents/compliance-guidance/801/physician.pdf>
- HSHS Code of Conduct: <https://hshs.ellucid.com/documents/view/22348>



# Questions?

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