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# Health Information Privacy & Compliance Program Training

# Agenda

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- **Health Information Privacy Training**
  - Oversight Agencies
  - HIPAA
  - Other Regulations
  - Tips for Compliance
  - Recent Enforcement
- **Compliance Program Training**
  - Oversight Agencies
  - Laws & Regulations
  - Clarity Compliance Program
  - Service Delivery, Documentation, and Billing
  - Your Responsibilities
  - Recent Enforcement





“Your previous provider refused to share your electronic medical records, but not to worry—I was able to obtain all of your information online.”

# Health Information Privacy Training

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# Oversight Agencies

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## Federal:

- Office for Civil Rights (OCR)
- Centers for Medicare and Medicaid Services (CMS)
- Department of Justice (DOJ)
- Substance Abuse and Mental Health Services Administration (SAMHSA)

## State:

- New York State Attorney General
- New York State Office of Mental Health (OMH)

# HIPAA Key Terms

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- Health Insurance Portability and Accountability Act (HIPAA): provides privacy standards to protect patients' health information
- Protected Health Information (PHI): individually identifiable health information that is held or transmitted by a covered entity.
  - Individually Identifiable: identifies an individual or there is a reasonable basis to believe it can be used to identify an individual
    - 18 identifiers (e.g., name, date of birth, social security #, service dates, address, etc.)
  - Health Information: relates to physical or mental health condition of someone at any time; provision of healthcare to someone; or payment for healthcare at any time
- Covered Entity: Covered entities must comply with HIPAA, and are health plans, health care clearinghouses, and healthcare providers who electronically transmit health information. Clarity is a covered entity.
- Business Associate: A person/entity that performs functions on behalf of or provides services to a covered entity, which involves the use or disclosure of PHI.

# HIPAA Evolution

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1996  
• HIPAA Signed  
Into Law

2005  
• Effective Date  
of HIPAA  
Security Rule

2009  
• Effective Date  
of HITECH and  
the Breach  
Notification  
Rule

2003  
• Effective Date  
of HIPAA  
Privacy Rule

2006  
• Effective Date  
of HIPAA  
Enforcement  
Rule

2013  
• Effective Date  
of the Final  
HIPAA Omnibus  
Rule

# HIPAA Privacy Rule

- Protect patient information
- Minimum Necessary Rule: make reasonable efforts to limit the use and disclosure of PHI to the minimum necessary to accomplish the intended purpose
- Notice of Privacy Practices: explains how the organization uses and discloses PHI and individuals' rights
- Policies and procedures for authorizations, managing access requests, HIPAA violation reporting, and breach response
- Clarity has 30 days to provide clients a copy of their medical records once requested
- HIPAA Privacy Officer: Heather Bradley x257
- Required Disclosures:
  - Individual exercises access rights
  - HHS OCR investigation/compliance review
- Permitted Disclosures:
  - Treatment, payment, operations
  - Required by law or for public health activities
  - To avoid serious threat to health or safety
- All other disclosures require consent/authorization from the individual
- Clients can revoke their authorization to use or disclose their PHI at any time

# HIPAA Security Rule

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- Provides safeguards for the confidentiality, integrity, and availability of electronic PHI
  - Confidentiality: ePHI is only accessible by authorized people and processes
  - Integrity: ePHI is not altered or destroyed in an unauthorized manner
  - Availability: ePHI can be accessed as needed by an authorized person
- HIPAA Security Officer: Dan Russo x100
- Conduct Security Risk Assessment to identify and address potential vulnerabilities
- Implement Safeguards:
  - Administrative: Policies & procedures to manage people and processes involved in handling PHI
  - Physical: Address the protection of physical access to facilities, systems, and devices storing or processing PHI
  - Technical: Technological measures to protect ePHI from unauthorized access, disclosure, or alteration

# More Health Information Privacy Laws

## NYS Mental Hygiene Law

- Applies to providers operated, licensed, or funded by OMH
- § 33.13: Clinical Records; confidentiality
- § 33.16: Access to clinical records
- Limited circumstances where information can be released without client consent or a court order

## 42 CFR Part 2

- Additional consent requirements to release substance use disorder (SUD) information and cannot be used in legal proceedings without client consent or a court order.

## Reproductive Health:

- Update to HIPAA Privacy Rule that prohibits the disclosure of PHI to conduct an investigation or impose liability on any person for seeking, obtaining, providing, or facilitating lawful reproductive health care

## NYS Public Health Law Section § 2782

- Additional consent requirements to release HIV/AIDS information, limited circumstances where disclosure is allowed without consent.

## NYS SHIELD Act

- Requires companies implement data security safeguards for private information and outlines breach notification requirements

# Tips for Compliance

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- Follow the medical record request process by notifying site designated person of any requests.
- Only access information you have a legitimate, job-related reason to access. Self-disclose if you access a chart you should not have been in or if you disclosed information you should not have.
- Avoid conversations about clients in the hallway, near the front desk, or in common areas.
- Do not use client information/pictures in any social media & do not comment on social media posts of clients or involving clients
- All record releases, reports, letter, etc. require a formal request that is uploaded to the chart. Consult the Compliance Officer immediately for subpoenas and court orders.

# Tips for Compliance

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- Encrypt any emails containing PHI by typing secure in the subject line or selecting encrypt under message options.
- Use Awards for any internal email containing PHI
- Do not keep paper copies of PHI- scan into Awards. No PHI in trashcans- must be shredded.
- Immediately report any lost keys or devices
- Never share login credentials
- Be cautious of links and attachments: Do you know who sent it? Were you expecting to receive it? When in doubt use the Phish Alert Button
- Self-disclose if you clicked on something you shouldn't have immediately

# Recent HIPAA Enforcement Actions

- 1/15/2025: OCR settled with Memorial Healthcare System for \$60,000 after investigating a complaint from an individual that he was not given timely access to his medical records, even after multiple requests via the patient portal, mail, and phone. Initial request in December 2020 and did not receive records until September 2021
- 3/21/2025: OCR announced a settlement with Health Fitness Corporation over a potential HIPAA Security Rule violation that exposed patient information. The investigation revealed that Health Fitness failed to conduct a proper risk analysis, leading to breaches between 2015 and 2018 that compromised ePHI. Health Fitness agreed to pay \$227,816 and implement a corrective action plan to resolve the issue.





# Compliance Training

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"Get ready! The next wave of legislation is rolling in."

# Key Terms

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**Fraud:** An intentional deception or misrepresentation of information made by a person with the knowledge that the deception results in unauthorized benefit to herself or himself or another person.

**Waste:** The mismanagement of resources, including incurring unnecessary costs because of inefficient or ineffective practices or systems.

**Abuse:** Having practices that are inconsistent with generally accepted business or medical practices.

# Oversight Agencies

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## Federal:

- U.S. Federal Sentencing Commission
- Department of Justice (DOJ)
- Office of Inspector General

## State:

- New York State Office of the Medicaid Inspector General (OMIG)
- New York State Office of Mental Health (OMH)
- New York State Education Department

# False Claims Act

**Federal and State False Claims Act:** Protects the government from being overcharged or sold substandard goods or services and imposes civil liability on any person who knowingly submits, or causes the submission, of a false or fraudulent claim to the federal government. Organizations or individuals can face civil or criminal prosecution.

## Federal False Claims Act

- Enacted during the Civil War, revised in 1986 and 2009
- Up to 3x the damages of the amount falsely claimed and civil penalties of \$14,308 to \$28,619 per false claim (amount adjusted for inflation annually)

## NYS False Claims Act

- Enacted in 2007, intentionally modeled after the Federal False Claims Act
- 2-3x the damages of the amount falsely claimed and fines of \$6,000-\$12,000– but can be adjusted to federal inflation amounts

**Whistleblowers Protections:** individuals can bring fraud cases on behalf of the government and receive a portion of the recovery (15-30%) and are protected from adverse action or retaliation for reporting.

# New Implications for False Claims Act

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**2010 Patient Protection & Affordable Care Act:** an overpayment must be reported and returned by the later of 60 days after the date the overpayment was identified or by the due date of any corresponding cost report.

**2009 Fraud Enforcement and Recovery Act:** Keeping funds you are not entitled to can be considered “reverse false claim”

**Deficit Reduction Act of 2006:** Increased enforcement of State Medicaid laws & regulations and requires training in False Claim Act and fraud, waste, and abuse

# Other Laws & Regulations

- **Physician Self-Referral Law (Stark Law):** Prohibits a physician from making referrals for Designated Health Services payable by Medicare or Medicaid to an entity in which they or a family member has a financial relationship unless an exception exists; cannot compensate a provider for the volume or value of referrals
- **Anti-Kickback Statute:** Established criminal penalties for offering, providing or receiving inducements for the referral of business reimbursable under federal healthcare programs
- **Federal and State False Claims Act:** Protects the government from being overcharged or sold substandard goods or services, and imposes civil liability on any person who knowingly submits, or causes the submission, of a false or fraudulent claim to the federal government
- **Exclusion Statute:** The OIG must exclude providers and suppliers convicted of any of the following from participation in all federal health care programs. Convictions related to healthcare fraud, theft, patient abuse, or neglect
- **Civil Monetary Penalty Law:** Enforced for a variety of healthcare fraud violations such as false claims
- **New York Social Services Law § 363-d:** Law requiring providers to implement compliance programs to prevent, detect, and correct non-compliance and fraud, waste, and abuse.
- **18 NYCRR Part 521:** Regulation created to provide guidance on implementation and enforcement of NYS SOS § 363-d

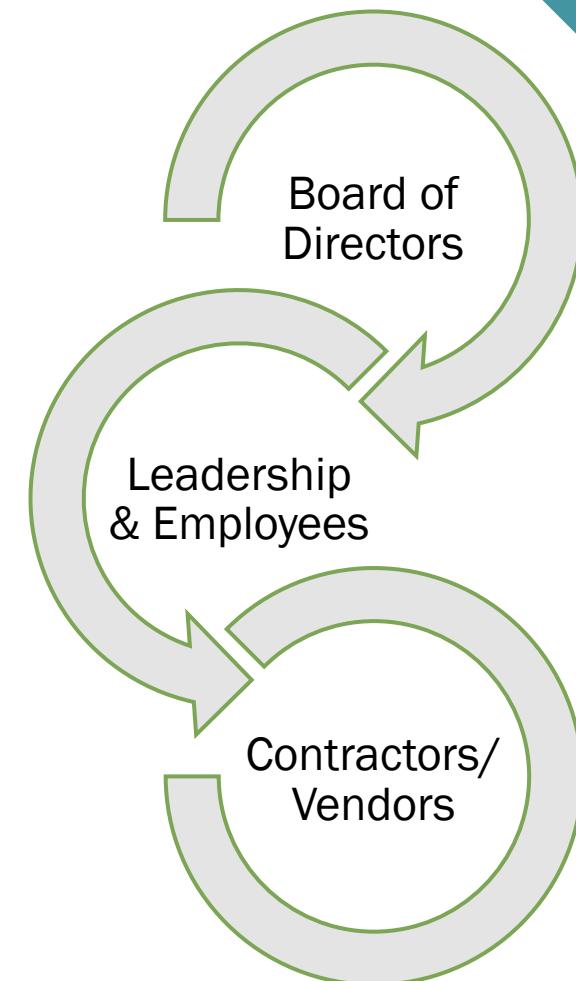
# Examples of False Claims

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- Claiming for a service that the person knows or should know is false;
- Submitting a claim for services not provided as claimed;
- Upcoding or using the wrong code to receive a higher payment;
- Double billing;
- Billing for a service that was not authorized or medically necessary;
- Billing for services by an unqualified provider;
- Contracting or employing with someone excluded from a Federal healthcare program; and
- Giving inducements for referrals or to recipients of service.

# Clarity's Compliance Program

- Organization-wide system adopted by Clarity's Board of Directors and Management that applies to everyone conducting business with Clarity.
- Ensures we comply with laws and regulations, and we conduct business ethically and with integrity
- Designed to prevent, detect, and respond to:
  - unethical or illegal behavior
  - non-compliance with laws and regulations and Clarity policies and procedures
  - Fraud, waste, and abuse in Federal and State healthcare programs, like Medicaid and Medicare



# Standards of Conduct

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**Mission:** Empower people with care, connections, and support for a lifetime of choice.

**Vision:** A supportive community where all people lead the lives they choose.

## Values:

- Put people first
- Be compassionate
- Instill hope
- Be approachable and accessible
- Uphold integrity
- Preserve dignity
- Adapt and adjust
- Live for the next step forward

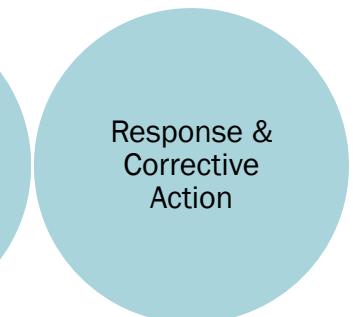
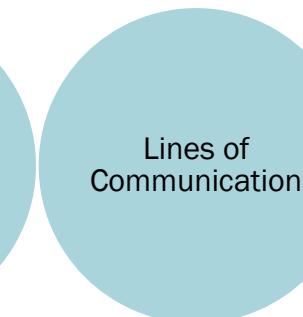
## Standards of Conduct:

- Compliance with the Law
- Quality of Service
- Work Environment
- Professional Conduct
- Professional Boundaries: People we support; co-workers, interns, Code of Ethics
- Accuracy of Records
- Gift, Gratuities, Kickbacks and Solicitation
- Conflict of Interest
- Proper Use of Corporate Assets
- Confidentiality
- Addressing Integrity Concerns

# Compliance Plan

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- Framework for Clarity's Compliance Program
- Defines the 7 elements of the Compliance Program
- Defines responsibilities of persons who work for or conduct business with Clarity



# Compliance Program Elements

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## 1. Policies & Procedures and Standards of Conduct:

- Based on laws, regulations, and Clarity practices and values to implement compliance program. Reviewed annually
- Provide guidance on Clarity's accepted processes and emphasize our culture of compliance

## 2. Compliance Program Oversight:

- Compliance Officer is responsible for the overall operation of the compliance program and assessing its effectiveness
- Compliance Committee works closely with the Compliance Officer to ensure the seven elements of the Compliance Program are in place by upholding Clarity practices and identifying and monitoring risks
- Board of Directors stay informed of Compliance Program activities to fulfill their fiduciary duties of oversight

# Compliance Program Elements

## 3. Training and Education:

- Annual training on the importance of Clarity's compliance program; fraud, waste, and abuse laws; how to report non-compliance; whistleblower protections; and billing and service provision;
- Vital for people to recognize potential compliance issues and to report

## 4. Lines of Communication:

- Report compliance concerns to:
  - Compliance Officer- ~~Emma Timblin~~ Heather Bradley x257
  - Executive Director- Kate Lewis x113
  - To your supervisor
  - Anonymously at 800-928-0084 or report.complyline.com. The organization pin is 894447 and the site ID is 1. Both the organization pin and site ID are needed to report via phone or online.
  - Clarity prohibits retaliation or intimidation for good faith reporting.



# Compliance Program Elements

## 5. Enforcing Standards:

- Disciplinary action will be taken for non-compliance with laws, regulations, policies and procedures, and standards of conduct.
- Disciplinary action will be taken for failing to report actual or suspected non-compliance
- Clarity applies progressive discipline consistent with the violation. More significant level of discipline will be taken for intentional or reckless behavior.

## 6. Auditing & Monitoring:

- Test compliance with laws and regulations, Clarity's policies and procedures, and risk areas on a routine basis
- Results of internal and external monitoring and auditing are reported to the Compliance Committee and the Board of Directors.
- Corrective Action Plans are developed and required for deficiencies

# Compliance Program Elements

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## 7. Response and Corrective Action:

- All reports of suspected non-compliance are investigated and documented by the compliance officer.
- Corrective action plans are required for deficiencies which can include:
  - Policy & procedure updates
  - System configurations
  - Additional training
  - Disciplinary action
  - Self-disclosure



# Service Delivery, Documentation, and Billing

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# Fraud, Waste, and Abuse

**Fraud:** intentional deception or misrepresentation that one knows, or should know, to be false, or does not believe to be true, and makes, knowing the deception could result in some unauthorized payment.

- To purposely bill for services that were not provided
- Misrepresenting who provided the services
- To bill for a service that has a higher reimbursement than the service provided
- Altering claim forms, electronic claim records, or service documentation

**Waste:** overutilization of services or other practices that, directly or indirectly, result in unnecessary costs to the healthcare system, including the Medicare and Medicaid programs.

- Providing services that are not medically necessary

**Abuse:** practices that may result in unnecessary costs to Medicaid and Medicare programs.

- Practices are inconsistent with sound fiscal, business or medical/clinical practices
- Services are not medically necessary
- Services fail to meet professional recognized standards for health care
- Billing for a non-covered service
- Coding does not comply with coding guidelines
- Service is not billed as rendered
- Inappropriately allocating costs on a cost report

# Common Risks

## Common Risks

- Billing for a service that was not provided
- Billing for a service not authorized or ordered
- Billing for days the person was absent
- Billing twice for the same service, overlapping service time
- Billing for service provided by unqualified staff
- Falsification of service or billing documents
- Service is not medically necessary or necessity not documented
- \*\*\*Service is not in accordance with treatment plan**
- Service is not documented adequately
- Coding errors or upcoding
- Start and end time inaccurately recorded
- Errors in rate or unit
- Keying or inputting errors
- Employee or contractor on Federal or State exclusion lists
- Damaged, lost, or destroyed records

## Coding & Billing Risks

- Submitting claims without complete documentation to support the service
- Submitting claims with incorrect: Billing codes, diagnostic codes, units of service, procedure codes, rate codes, dates of service, or service providers.

# Errors

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- Honest mistakes and innocent errors happen
- Internal controls are designed to ensure compliance and prevent errors
- Errors must be promptly reported once identified to prevent additional errors
- No civil or criminal penalties: Prosecution would require criminal intent to defraud; or actual knowledge of the claim being false, reckless disregard, or deliberate ignorance of the false claim
- Provider must return the funds erroneously claimed promptly

# NYCRR Title 18, Section 504.3 Medicaid Reimbursement

## Provider agrees to:

- (a) Prepare and maintain **contemporaneous records** demonstrating their right to receive payment...**and keep, for 6 years from date care/service furnished**, all records necessary to disclose the nature & extent of the service furnished and all information regarding claims for payment by, or on behalf of, the provider...
- (e) To submit claims for payment only for **services actually furnished** and which were medically necessary...
- (h) That the information provided in relation to any claim for payment shall be true, accurate and complete; and
- (i) To comply with the rules, regulations and official directives of the department.

# Our Standards

All service documentation, records, and reports are prepared contemporaneously (at the same time or in close proximity), accurately, and honestly;

All documentation supporting claims for service is complete and maintained in accordance with regulatory requirements and the Clarity's policies;

All claims submitted to any government or private health care program are accurate and comply with all Federal and State laws and regulations and payer requirements and Clarity's policies;

Claims are only submitted for medically necessary services provided by eligible providers.

All claims are properly documented and accurately coded; and

Billing errors are promptly identified, and any payments received in error are promptly returned to the payer.

Documentation must include required elements and must be permanent and legible

Backdating and predating documents is unacceptable

Utilize amendments for notes that need to be altered to document alteration date, name of person making change, and the alteration reason

# Your Responsibilities

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- Become familiar with Clarity's Standards of Conduct, Compliance Program Policies and Procedures,
- Comply with laws and regulations and Clarity's Policies and Procedures for service provision and billing
- Understand that Clarity has zero tolerance for any retaliation for "good faith" reporting of actual or suspected non-compliance and it should be reported to the Compliance Officer. Retaliation can look like threats, harassment, intimidation, demotion, reassignment, isolating/mocking, false accusation of poor performance, etc.
- Know how to report compliance concerns. Some examples are:
  - Falsification of records or documents
  - Improper acts in delivery or billing of services
  - Suspected fraud, waste, or abuse
  - Misuse or misappropriation of Clarity funds, information, equipment, facilities, or other assets or resources
  - Any act of retaliation or intimidation for reporting concerns or participating in an investigation

# Recent Compliance Enforcement Actions

## Federal:

- 3/22/2024: Inland Northwest Behavioral Health Agreed to Pay \$94,000 for Allegedly Violating the Civil Monetary Penalties Law by Employing an Excluded Individual
- 3/4/2025: Parkville Woman Pleads Guilty To Over \$3.6 Million In Medicaid Fraud by billing for mental health services for Medicaid recipients that were never provided.

## NYS:

- 2/5/2025: Imran Shams, 66, of California, was sentenced to  $8\frac{1}{3}$  to 25 years in state prison for his role in a scheme that fraudulently billed Medicaid millions for unnecessary medical tests. Shams, who was banned from billing Medicaid due to a previous fraud conviction, secretly owned Multi-Specialty, a fraudulent clinic. The clinic paid Medicaid recipients \$20 to \$50 to undergo unnecessary tests, often conducted by untrained individuals posing as healthcare professionals. Shams agreed to pay \$7 million in restitution.



# Final Thoughts

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- Compliance is doing the right thing, even when no one is looking
- Compliance is **EVERYONE'S** responsibility
- If something doesn't feel right or look right, it probably isn't
- When in doubt, **REPORT** it!