



November 21, 2023

**NOTICE**

The Kaweah Delta Health Care District Board of Directors will meet in an Audit and Compliance Committee meeting at 1:00 PM on Monday, November 27, 2023 in the Kaweah Health Support Services Building - Granite Conference Room {520 W. Mineral King Ave., Visalia}.

The Board of Directors of the Kaweah Delta Health Care District will meet in a Closed Audit and Compliance Committee meeting immediately following the 1:00 PM meeting on Monday, November 27, 2023 in the Kaweah Health Support Services Building – Granite Conference Room {520 W. Mineral King Ave., Visalia} pursuant to Government Code 54956.9(d)(2).

All Kaweah Delta Health Care District regular board and committee meeting notices and agendas are posted 72 hours prior to meetings (special meetings are posted 24 hours prior to meetings) in the Kaweah Health Medical Center, Mineral King Wing entry corridor between the Mineral King lobby and the Emergency Department waiting room.

The disclosable public records related to agendas are available for public inspection at Kaweah Health Medical Center – Acequia Wing, Executive Offices (Administration Department) {1st floor}, 400 West Mineral King Avenue, Visalia, CA and on the Kaweah Delta Health Care District web page <https://www.kawahhealth.org>.

KAWEAH DELTA HEALTH CARE DISTRICT  
Michael Olmos, Secretary/Treasurer

A handwritten signature in black ink that reads 'Cindy Moccio' in a cursive script.

Cindy Moccio  
Board Clerk  
Executive Assistant to CEO

DISTRIBUTION:  
Governing Board  
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<http://www.kawahhealth.org/about/agenda.asp>

# KAWEAH DELTA HEALTH CARE DISTRICT BOARD OF DIRECTORS AUDIT AND COMPLIANCE COMMITTEE

Monday, November 27, 2023

Kaweah Health Support Services Building, Granite Conference Room  
520 West Mineral King Ave, Visalia, CA 93291

ATTENDING: Directors; Mike Olmos (Chair) & Garth Gipson; Gary Herbst, Chief Executive Officer; Malinda Tupper, Chief Financial Officer; Rachele Berglund, Legal Counsel; Ben Cripps, Chief Compliance & Risk Officer; Amy Valero, Compliance Manager; Michelle Adams, Executive Assistant

## OPEN MEETING – 1:00PM

**Call to order** – *Mike Olmos, Audit and Compliance Committee Chair*

**Public / Medical Staff participation** – Members of the public wishing to address the Committee concerning items not on the agenda and within the subject matter jurisdiction of the Committee may step forward and are requested to identify themselves at this time. Members of the public or the medical staff may comment on agenda items after the item has been discussed by the Committee but before a Committee recommendation is decided. In either case, each speaker will be allowed five minutes.

### 1. **Written Reports** – Committee review and discussion of written reports

1.1 [Compliance Program Activity Report](#) – *Amy Valero*

### 2. **Verbal Reports**

2.1 [Regulatory Enforcement – Provide guidance for Governing Boards oversight of a Compliance Program](#) – *Ben Cripps*

### 3. **Approval of Closed Meeting Agenda** – Kaweah Health Support Services, Granite Conference Room – immediately following the open meeting

- o Conference with Legal Counsel – Anticipated Litigation  
Significant exposure to litigation pursuant to Government Code 54956.9(d)(2) (5 cases)  
– *Ben Cripps and Rachele Berglund (Legal Counsel)*

**Adjourn Open Meeting** – *Mike Olmos, Audit and Compliance Committee Chair*

## CLOSED MEETING – Immediately following the 1:00PM open meeting

**Call to order** – *Mike Olmos, Audit and Compliance Committee Chair*

*November 27, 2023 - Audit and Compliance Committee*

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*Mike Olmos – Zone I  
Secretary/Treasurer*

*Lynn Havard Mirviss – Zone II  
Vice President*

*Garth Gipson – Zone III  
Board Member*

*David Francis – Zone IV  
President*

*Ambar Rodriguez – Zone V  
Board Member*

**MISSION: Health is our Passion. Excellence is our Focus. Compassion is our Promise.**

1. **Conference with Legal Counsel - Anticipated Litigation** – Significant exposure to litigation pursuant to Government Code 54956.9(d)(2) (5 cases) – *Ben Cripps and Rachele Berglund (Legal Counsel)*

**Adjourn** – *Mike Olmos, Audit and Compliance Committee Chair*

*In compliance with the Americans with Disabilities Act, if you need special assistance to participate at this meeting, please contact the Board Clerk (559) 624-2330. Notification 48 hours prior to the meeting will enable the District to make reasonable arrangements to ensure accessibility to the Kaweah Delta Health Care District Board of Directors meeting.*

# Compliance Program Activity Report – Open Session

August 2023 through October 2023

Ben Cripps, Chief Compliance & Risk Officer



[kaweahhealth.org](https://kaweahhealth.org)



# Education

## Live Presentations

- Compliance and Patient Privacy
  - Urgent Care
  - Lindsay Rural Health Clinic
  - Mental Health Hospital
  - Exeter Rural Health Clinic
  - Patient and Family Services
  - Radiology
  - Tulare Rural Health Clinic
  - GME New Resident Orientation
- Access To Kaweah health Electronic Records
  - Physician Office Staff

## Written Communications – Bulletin Board / Area Compliance Experts (ACE) / All Staff

- False Claims Act
- Code of Conduct

# Prevention & Detection

- **Californian Department of Public Health (CDPH) All Facility Letters (AFL)** – Review and distribute AFLs to areas potentially affected by regulatory changes; department responses reviewed and tracked to address the regulatory change and identify potential current/future risk.
- **Medicare and Medi-Cal Monthly Bulletins** – Review and distribute bulletins to areas potentially affected by the regulatory change; department responses reviewed and tracked to address the regulatory change and identify potential/current risk.
- **Office of Inspector General (OIG) Monthly Audit Plan Updates** – Review and distribute OIG Audit Plan issues to areas potentially affected by audit issue; department responses reviewed and tracked to identify potential current/future risk.
- **California State Senate and Assembly Bill Updates** – Review and distribute legislative updates to areas potentially affected by new or changed bill; department responses reviewed and tracked to address regulatory change and identify potential current/future risk.

# Prevention & Detection

- **User Access Privacy Audits** – Fairwarning daily monitoring of user access to identify potential privacy violations.
  - Kaweah Health Employees
  - Non-employee users
- **Office of Inspector General (OIG) Exclusion Attestations** – Quarterly monitoring of department OIG exclusion list review and attestations.
- **Medicare PEPPER Report Analysis** – Quarterly review of Medicare Inpatient PEPPER statistical reports to identify outlier and/or areas of risk; evaluate with Kaweah Health leadership quarterly at PEPPER Review meeting; Distribution of Rehabilitation, Hospice, Home Health, and Mental Health PEPPER Reports to leadership for evaluation.

# Oversight, Research & Consultation

## New

**Dialysis Alteplase Billable Units** – Research and consultation to determine why Clarity was not sending the correct billable unit amounts for Alteplase. It was determined there was an oversight on the units and all claims have been reviewed for corrections. A clinical review of the eighteen (18) accounts impacted was completed. The review indicated the claim errors resulting in an underpayment to Kaweah Health. Charges have been corrected and the claims rebilled. Findings were shared with Dialysis, Revenue Integrity and Pharmacy Leadership.

**340B Audit Ceftazidime** – Research to determine why the Dialysis drug Ceftazidime did not contain a purchase history for the correct Charge Description Master (CDM). It was determined there were seven (7) separate charges reflecting the incorrect CDM resulting in underpayments. The charges have been corrected and rebilled to reflect the proper billing units. Findings were shared with Dialysis, Revenue Integrity and Pharmacy Leadership.

**Calcitriol and Sensipar Dialysis Medication** – Research to determine why discrepancies exist between the KHHIP (Kaweah Health Home Infusion Pharmacy) dispensed amount and Clarity billing for two Dialysis drugs. It was determined that the report being used by Dialysis to manually charge Sensipar is reporting the wrong quantities, while Calcitriol is being billed for only one dose, regardless of the volume dispensed. Calcitriol is a statistical charge and not on the claim, thus does not have a financial impact. Sensipar is an accumulator requiring the bills to be corrected.. A three (3) year look back is being completed and a report is being generated to verify that the correct data interfaced and that manual charges are correct. A review is being conducted to determine if there is an underpayment or overpayment for Sensipar, the financial impact is not yet known. All claims are being held until resolved.

# Oversight, Research & Consultation

## New

**Billing Nitroglycerin in the Cath Lab** – Consultative oversight to ensure appropriate billing for Nitroglycerin in the Cath Lab due to pharmacy making small batches to conserve product in response to supply chain issue. It was determined that the accumulation mapping for Nitroglycerin needs to be adjusted anytime the National Drug Code (NDC) associated with Nitroglycerin is used to prevent overbilling. A charge report was generated indicating all charges posted as statistical charges as planned. Findings were shared with Revenue Integrity and Pharmacy Leadership.

**Duplicate IV Drip Charge** – Research to determine why duplicate charges for certain IV-drip medications were occurring. It was determined that nursing was selecting “Begin Bag Event” each time the titration of an IV drip bag was adjusted, instead of “Rate Change” thus resulting in duplicate charges that were identified and corrected. Nursing leadership will educate nurses in all departments with a heavy focus in ICU and Critical Care. Pharmacy will review data through weekly audits. A follow up meeting is scheduled in December to gauge improvements.

**Physician Orders by Text, including Secure Messaging** – Research on whether a physician can place orders via secure messaging or text messaging. It was confirmed CMS does not permit the texting of patient orders by physicians or other health care providers, regardless of the platform used. Findings were shared with Hospice Leadership.

# Oversight, Research & Consultation

## Ongoing

Fair Market Value (FMV) Oversight – Ongoing oversight and administration of physician payment rate setting and contracting activities including Physician Recruitment, Medical Directors, Call Contracts, and Exclusive and Non-Exclusive Provider Contracts.

# Licensing & Enrollment

## New

**Licensing Applications** – Forms preparation and submission of licensing application to the California Department of Public Health (CDPH); ongoing communication and follow-up regarding status of pending applications.

- *Acute Hospital License Renewal*
- *Home Health License Renewal*
- *Hospice Move – CDPH Notification*

**Enrollment** – Forms preparation and submission of licensing application to CDPH, as well as Medicare and Medi-Cal Facility Payor Enrollment; ongoing communication and follow-up regarding status of pending applications.

- *PECOS Enrollment – Hospice Move*
- *PECOS Enrollment Kaweah Health Medical Clinic-Plaza*

# Auditing & Monitoring

## New

### Charge Audit Review

**Situation:** The Compliance Department conducted a charge billing review for Outpatient Services due to The Office of Inspector General's (OIG) increased focus on claims accuracy and Medicare Recovery Auditors, as well as the implementation of Sorian Financial electronic medical record system.

**Assessment:** An internal audit of thirty (30) randomly selected encounters for dates of service January 1, 2023 – March 31, 2023 was completed. The electronic health record was used to review and assess whether the charge was supported by a physician order, the appropriateness of the billing modifier (as necessary), if the billing units noted on the order match the billing units submitted on the claim, if the service ordered by the physician match the service billed on the claim, and if Kaweah Health was reimbursed for the charges billed. The financial impact compliance rate was 99%. The results of the review have been shared with appropriate leadership.

**Recommendation:** Based on the findings, no further assessment is required at this time. The Compliance Department will continue to reassess the risk associated with the charge audits and determine if a reaudit will be required in the future.

# Auditing & Monitoring

## New

### Urology Clinic Service Line

**Situation:** The Urology Clinic is a new service line that opened at Kaweah Health in 2022. A review was initiated to determine whether Kaweah Health is submitting claims in compliance with several elements: CMS documentation and billing guidelines, Article Number, diagnosis requirements, authorization, consent requirements for the procedure (when required), drug administration services for beneficiaries of Medicare Advantage and Commercial plans, compliance with documenting non-billable drugs in the Medicare Administration Record (MAR) and that the progress notes and services provided were captured on the billing statement.

**Assessment:** An internal audit of thirty (30) randomly selected encounters with dates of service from October 2022 – March 2023 was completed. The financial impact compliance rate totaled 99%. The results of the review have been shared with Urology and Health Information Management Leadership.

**Recommendation:** Based on the findings, no further assessment is required at this time.

# Auditing & Monitoring

## Update

Noridian Targeted Probe and Educate (TPE) Kaweah Health Medical Group (KHMG)

**Situation:** On February 22, 2023, Noridian notified Kaweah Health Medical Group of its intent to complete a prepayment review of pelvic ultrasound services billed with Current Procedural Terminology (CPT) code 76857 as a Kaweah Health Medical Group (VMC) provider was identified in the top 15% of dollars paid for the CPT in question compared to their peers.

**Assessment:** Noridian completed a review of thirty-four (34) randomly selected claims for dates of service February 22, 2023 – August 16, 2023. The review noted a 100% compliance rate for appropriate billing of pelvic ultrasound services.

**Recommendation:** The review has been closed by Noridian.

# Projects

## Update

### Compliance Program Effectiveness Tool

**Situation:** In 2017, compliance professionals from the Department of Health and Human Services (HHS) and Office of Inspector General (OIG) published the results of a roundtable discussion surrounding effective methods for measuring the effectiveness of the seven (7) elements of compliance programs. A resource document was made public and is now widely used as an annual assessment conducted by healthcare organizations to measure the effectiveness of the organization's compliance program.

**Assessment:** The effectiveness tool is used to identify potential gaps and risks within a compliance program. The Compliance Program Effectiveness Assessment has been completed.

**Outcome:** The results of the Effectiveness Assessment were used to develop actionable items to enhance the Compliance Program. A prioritization matrix was developed to identify which of the findings were deemed to have the greatest impact on the compliance program from lowest to highest risk, and lowest to highest effort. To date, items identified as having high-risk and requiring low-effort have been the primary focus with much work being accomplished.

# The pursuit of healthiness



# Regulatory Enforcement

November 2023

Ben Cripps, Chief Compliance & Risk Officer



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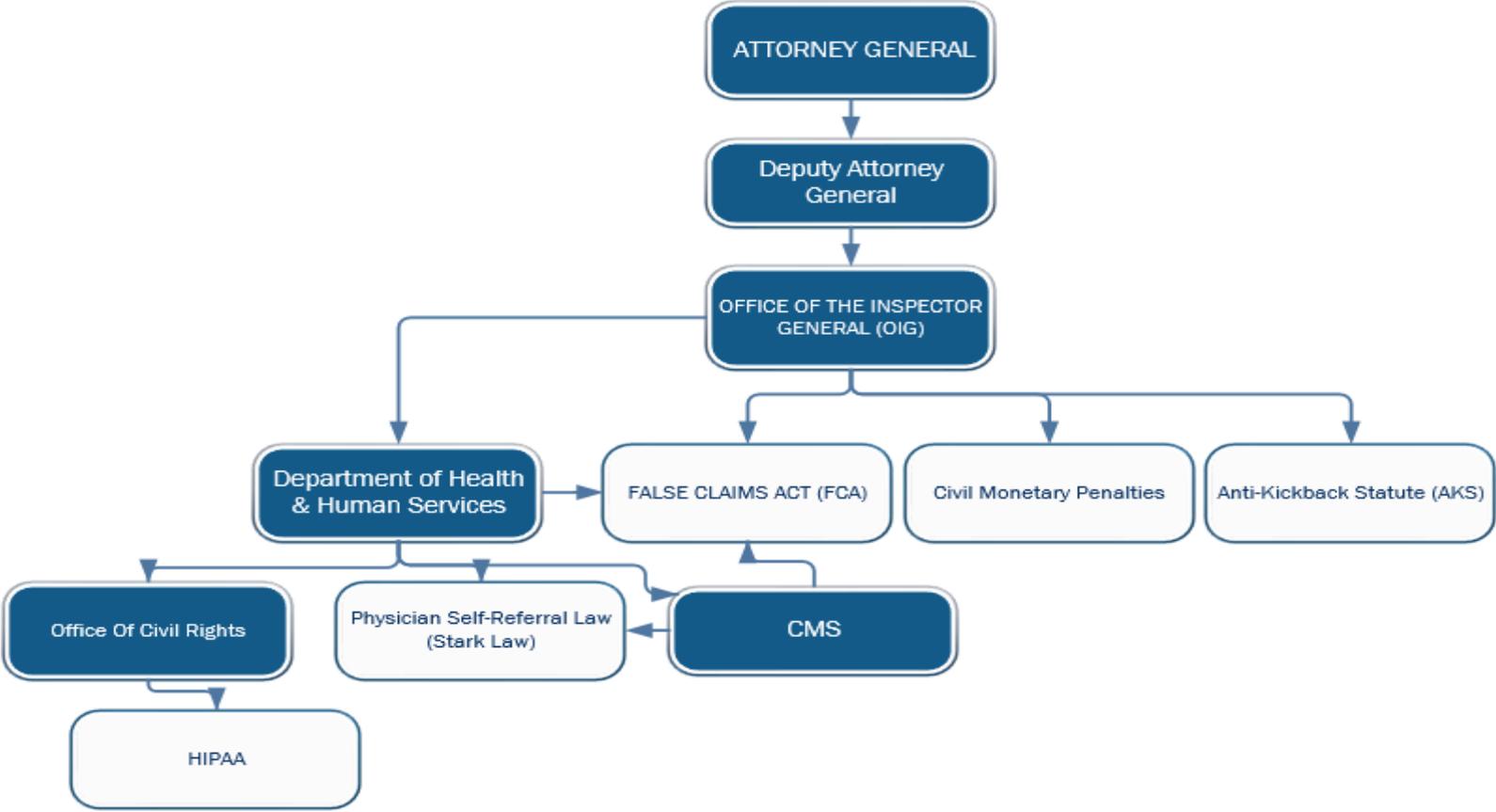


# 7 Elements of an Effective Compliance Program

1. Policies & Procedures; Code of Conduct
2. Oversight - Chief Compliance [and Risk] Officer; Audit and Compliance Committee, Board of Directors
3. Effective Training & Education
4. Ongoing Auditing & Monitoring; Periodic Evaluation of Program Effectiveness
5. Anonymous Reporting Mechanism; No Retaliation
6. Program promoted and enforced consistently – Appropriate incentives – Appropriate disciplinary measures
7. Respond promptly to detected offenses with corrective action

# Organizational Structure

UNITED STATES DEPARTMENT OF JUSTICE



# Enforcement of Compliance Standards

Office Of The Inspector General (OIG)



- ✓ Integrity
- ✓ Efficiency
- ✓ Accountability

# Anti-Kickback Statute (AKS)

Criminal law that prohibits the knowing and willful payment of remuneration to induce or reward patient referrals or the generation of business involving any item or service payable by the Federal health care programs (e.g. drugs, supplies, or health care services for Medicare or Medicaid patients).

Examples:

- Financial Incentives for referrals
- Free or low rent for office space
- Travel expenses paid to physicians
- Tickets to sporting events/entertainment

Penalties:

- Maximum fine of \$100,000.00
- Imprisonment up to 10 years

# False Claims Act (FCA)

Law that imposes liability on any individual or entity that knowingly submits or causes to be submitted false or fraudulent claims for payment to the Government.

Examples:

- Performing inappropriate or unnecessary medical procedures with the intent to increase Medicare or Medi-Cal reimbursement.
- Intentionally using diagnosis or billing codes that suggest a more expensive surgery, illness, treatment or service than was actually provided.
- Intentionally using multiple billing codes to represent services that may otherwise be captured in a single billing code.
- Counterfeiting a signature.

Penalties:

- Three times the amount of damages plus \$11,000.00 per claim filed
- Exclusion by Medicare/Medicaid
- Loss of professional licensure

# Physician Self-Referral Law (Stark Law)

A strict-liability statute that prohibits a physician from making referrals for certain designated health services payable by Medicare to an entity with which the physician, or an immediate family member, has a financial relationship.

Examples:

- Physician refers all orders for clinical laboratory tests on Medicare patients to physician's sister's laboratory.
- Physician routinely refers Medicare patients to a home health agency for home health services in which physician is a medical director of and receives a sum substantially above fair market value.

Penalties:

- CMP up to \$100,000.00
- CMP up to \$15,000.00 for each improper claim submitted
- CMP up to \$100,000.00 per arrangement

# Health Insurance Portability and Accountability Act (HIPAA)

Regulates the use and disclosure of individuals' identifiable health information (protected health information or PHI) by covered entities, including health care providers that conduct certain health care transactions electronically, and their business associates.

Examples:

- Accessing patient information for personal use
- Accessing patient information without a business need
- Sharing patient information with people who are not authorized to receive the information
- Misdirected patient information

Penalties:

- Fines up to \$50,000.00 per violation
- Fine up to \$1.5 million per year/violation

# Civil Monetary Penalties Law (CMP)

The Office of Inspector General (OIG) has the authority to seek civil monetary penalties (CMPs), assessments, and exclusion against an individual or entity based on a wide variety of prohibited conduct such as:

- False and Fraudulent Claims
- Kickbacks
- Patient Dumping
- Physician Self-Referral (STARK)

# Prevention

## STARK/Anti-Kickback Statute

- CP.03 Physician Contracts and Relationships
- Fair Market Value Opinion
- Audits
- Payment Review
- Legal Review of Contracts

## HIPAA

- CP.05 Compliance and Privacy Issues Investigation and Resolution
- FairWarning
- Operational Compliance Committee – Health Information Management
- Patient Privacy Walkthrough

## False Claims Act

- CP.13 Federal and State False Claims Act and Employee Protection Provisions
- Operational Compliance Committee
- Internal Audits
- External Audits

# Conclusion

Health Care Boards should ensure that enforcement and disciplinary mechanisms are in place before violations of compliance policies, government health care requirements, or other applicable laws occur.

# Resources

General Compliance Program Guidance. Office of the Inspector General, US Department of Health and Human Services. November 2023.