



THIS IS THE ANNUAL COMPLIANCE TRAINING FOR ALL CENTRAL VALLEY PACE (PACE) STAFF, VENDORS, CONTRACTORS AND NETWORK PROVIDERS. Please review the following, then complete the appropriate attestation at the end of this document, sign it and email to [compliance@cvpace.org](mailto:compliance@cvpace.org) or fax to the attention of the Compliance Officer at 209-724-6001. ***Found at the end of this document, all contractors, including network providers will sign the First Tier, Downstream and Related Entity Certification. All employees and contract employees will sign the Employee Certification.***

1. **FRAUD, WASTE, & ABUSE (FWA)** - The definitions of FWA are:
  - FRAUD – the intentional deception or misrepresentation that an individual or entity knows to be false or does not believe to be true and makes, knowing the deception could result in some unauthorized benefit to himself/herself or some other person.
  - ABUSE – practices by facilities, physicians, and suppliers, while not usually considered fraudulent, are nevertheless inconsistent with accepted medical, business, and fiscal practices.
  - WASTE – healthcare spending that can be eliminated without reducing the quality of care and inefficiency waste.

PACE's "Preventing Fraud, Waste, and Abuse" policy is in place to protect the revenue, property, reputation, community relationships and other assets of all sites of service from fraudulent activity.

Examples of FWA include: as falsifying timesheets or reimbursement claims, erroneous financial and tax reporting, forgery, false claims, use or disposition of corporate assets for personal gain, stealing/misappropriation of PACE property, bribery, kickback, alteration of official documents, embezzlement, unauthorized non-business acquisitions, and theft.

The compliance policy "Preventing Fraud, Waste, and Abuse" has a procedure for reporting waste and abuse anonymously. Disciplinary action up to and including termination may be taken upon discovery of any fraud, waste or abuse as set forth in the policy for addressing instances of noncompliance.

REFERENCES:

**CMS – Medicare Fraud & Abuse: Prevent, Detect, Report** - <https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MILN/MLNProducts/Downloads/Fraud-Abuse-MLN4649244.pdf>

## 2. ANTI-KICKBACK/STARK

The Anti-Kickback Statute prohibits offering, paying, soliciting, or receiving remuneration (almost anything of value - bought or given by or between medical clinicians - can be characterized as remuneration) to induce referrals of items or services covered by



Medicare, Medicaid, and other federally funded programs. The Stark Law forbids a healthcare provider or company from billing Medicare and Medicaid for certain services referred by physicians that have a financial relationship with the company. The Anti-Kickback Statute and the Stark Law are intended to ensure that medical providers' judgments are not compromised by improper financial incentives and are instead based on the best interests of their patients.

It is important to know that anyone found to have violated the anti-kickback statute may be fined \$25,000 or more and imprisoned for up to five (5) years, and are subject to discipline up to and including termination. Absent a conviction, individuals who violate the Anti-Kickback Statute may still face exclusion from federal health care programs if found to have violated the anti-kickback statutes.

As an example, in a recent case in California, a whistleblower complaint alleged an arrangement between a laboratory company and physician practices violated the False Claims Act. The settlement in that case, which required the payment of over \$40 million in restitution, resolved allegations that the laboratory provided physician practices with in-office dieticians in exchange for physician referrals for laboratory testing in violation of the Federal Anti-kickback Statute.

Other examples of kickback violations prosecuted by the government, including the above example and the following:

- Providing free dinners or lunches to clinicians or providing other gifts, such as tickets to sporting events or electronics
- Entering into consulting or research agreements with clinicians under which payments are made, but minimal (or zero) work is done in return.
- Travel expenses paid to clinicians by corporations with which they do business with.
- Cash payments for Medicare referrals.
- Agreements for speaking or teaching where the payments are above fair market value or made with the intent to induce referrals.

**The best means to avoid violating the anti-kickback and STARK laws are:**

- Do not enter into an agreement with a company in which you have a financial interest without the written consent of the PACE CEO (see also, Conflict of Interest policy).
- Do not offer or accept anything of value, including cash, a free meal, trip, golf, tickets to an event, rebates, discounts, etc. without approval of the PACE CEO. Nominal gifts such as cookies or gift baskets around the holidays are okay to accept so long as they are shared with all staff.
- Negotiate agreements with terms that reflect fair market value, align with industry standards, and result from arms-length negotiations, and have those written agreements reviewed by legal counsel.
- Follow the policy that only the PACE CEO may execute contracts and bind PACE to any agreement.



- It is always better to contact the Compliance Officer or General Counsel to review and address any potential concerns than to have a claim brought against you.

PACE's "Preventing Fraud, Waste, and Abuse" policy addresses kickbacks and the procedures for reporting suspected unlawful kickbacks.

### **3. CONFLICT OF INTEREST & STANDARDS OF CONDUCT**

PACE's Conflict of Interest policy is described in the "Employee Handbook", each new employee acknowledges receipt and understanding of the employee handbook, which addresses conflict of interest. Furthermore, the Compliance Department has developed a "Code of Conduct/Conflict of Interest" policy which is aimed at assisting PACE and staff in avoiding situations that may be or actually are conflicts of interest. Examples of conflicts of interest can be found in the "Code of Conduct/Conflict of Interest" policy. PACE employees is required to disclose any conflicts of interest to the PACE CEO.

PACE's "Employee Handbook" also contains a non-exclusive list of standards codes of conduct for each staff member. These codes of conduct supplement other policies governing staff conduct (e.g., conflict of interest). As the handbook reflects, the best guide for maintaining the PACE standards of conduct are to keep in mind at all times the need for staff to conduct themselves with reasonable and proper regard for the welfare and rights of all our employees and for the best interests of PACE and its patients.

NOTE: as mentioned in the anti-kickback policy, conflict of interest overlaps and employees may not give or accept gifts, loans, or favors from persons having business relationships with PACE. Failure to promptly disclose actual or potential conflicts of interest may result in discipline, up to and including dismissal.

Whenever these issues arise, contact either General Counsel or the Compliance Officer who will discuss the issue with the Chief Executive Officer, who has the right to determine whether any relationship represents an actual or potential conflict of interest in violation of this policy.

### **4. FALSE CLAIMS ACT**

The False Claims Act ("FCA") protects the government against overcharges and false claims for services. PACE has a "Preventing Fraud, Waste, and Abuse" Policy that addresses this issue. Internally, PACE staff who violate the FCA are subject to discipline up to and including termination.



Submitting claims to a government agency for payment for services that were not rendered or were rendered unnecessarily, or claiming or reporting costs not actually incurred, is fraud on the government and a violation of the FCA.

The following may result from violation of the Federal False Claims Act:

- Felony conviction;
- Fine of not more than \$25,000 or imprisonment for not more than five years, or both;
- Aiding and abetting liability;
- Restitution;
- Exclusion from eligibility for employment or contract under federal programs

The following may result from violation of the California False Claims Act:

- Three times the amount of damages;
- Penalties of not less than \$5,500 and not more than \$11,000/violation;
- Exclusion from eligibility for employment or contract under state programs.

It is important to note that proving intent to defraud the government is not required because the FCA defines “knowing” to not only include actual knowledge but also deliberate ignorance of the truth or falsity of the information and reckless disregard for the truth or falsity of the information. In other words, if a provider or billing staff member is not careful and routinely puts in billing codes they should know are incorrect (would know through training or resources available), that would be a violation of the FCA.

The best protections against violating the FCA are careful coding by the providers and billing staff, frequent training of providers and billing staff on coding, and regular billing audits by the billing department manager.

## **5. HEALTH INSURANCE PORTABILITY and ACCOUNTABILITY ACT (HIPAA) & PRIVACY**

We provide ongoing training on privacy, security, and disclosing of a patient’s protected health information (PHI). PACE’s HIPAA information and “Notice of Privacy Practices” is available on the PACE intranet in policies (PolicyTech) folder for reference.

### **A. HIPAA Training Highlights**

- Protected health information, or “PHI”, is data that relates to:
  - the past, present, or future payment for the provision of health care to the individual, and that identifies the individual or for which there is a reasonable basis to believe it can be used to identify the individual (e.g., name, address, birth date, Social Security Number);
  - the individual’s past, present or future physical or mental health or condition, or;
  - the provision of health care to the individual.
- PACE staff can disclose a patient’s PHI in the following situations:



- With the patient's consent;
- Without the patient's consent during a medical emergency, as determined by a provider or for purposes of treatment, operations, or payment (TOP) (NOTE; HHS definitions below and always best to consult with the Privacy Officer when in doubt);
- Other circumstances as required by law such as a subpoena, mandatory reporting, etc. (Refer to Notice of Privacy Practices)
- HHS "TOP" definitions:
  - Treatment is the provision, coordination, or management of health care and related services for an individual by one or more health care providers, including consultation between providers regarding a patient and referral of a patient by one provider to another.
  - Health Care Operations are any of the following activities: (a) quality assessment and improvement activities, including case management and care coordination; (b) competency assurance activities, including provider or health plan performance evaluation, credentialing, and accreditation; (c) conducting or arranging for medical reviews, audits, or legal services, including fraud and abuse detection and compliance programs; (d) specified insurance functions, such as underwriting, risk rating, and reinsuring risk; (e) business planning, development, management, and administration; and (f) business management and general administrative activities of the entity, including but not limited to: de-identifying protected health information, creating a limited data set, and certain fundraising for the benefit of the covered entity.
  - Payment encompasses activities of a health plan to obtain premiums, determine or fulfill responsibilities for coverage and provision of benefits, and furnish or obtain reimbursement for health care delivered to an individual and activities of a health care provider to obtain payment or be reimbursed for the provision of health care to an individual.

## B. The Minimum Necessary Rule

As a general rule, absent patient consent it is rarely necessary to disclose a patient's entire medical record for purposes of treatment, operations or payment. Remember the "minimum necessary rule" allows to disclose only as much PHI as will allow the recipient to address current health conditions (treatment), as is necessary for operations purposes (healthcare operation), or for claims submission/payment (payment). When In doubt get the patients consent to release any information and double check the signature.

The minimum necessary policy also reminds employees that the access to PHI is determined by an employee's job description/duties and defined by the "Information Access Management" and "Security Access to Protected Health Information" IT policies. Failure to follow these policies and inappropriately access PHI may result in discipline, up to and including dismissal.



### C. Sensitive Information Requiring Special Procedures

Certain categories of sensitive information require additional consent procedures, including the following:

- Psychotherapy Notes - PACE must obtain the patient's and psychotherapist's authorization to use or disclose psychotherapy notes with the following exceptions:
  - a. The psychotherapist who originated the notes may use them for treatment.
  - b. PACE may use or disclose, without an individual's authorization, the psychotherapy notes, for its own training, and to defend itself in legal proceedings brought by the individual, for HHS to investigate or determine PACE's compliance with the Privacy Rules, to avert a serious and imminent threat to public health or safety, to a health oversight agency for lawful oversight of the originator of the psychotherapy notes, for the lawful activities of a coroner or medical examiner, or as required by law.
  - c. Psychotherapy notes may not be produced in response to a subpoena – a court order is required.
- Substance Abuse Records may only be disclosed with the specific consent of the patient, pursuant to a court order, or as otherwise required by law.
- HIV/AIDS Test Results may only be disclosed with the specific consent of the patient, pursuant to a court order, or as otherwise required by law.
- Minor Patients' medical records pertaining to the following may NOT be disclosed, even to the minor's parent or legal guardian, without the minor's consent:
  - a. Pregnancy
  - b. Contraception
  - c. Abortion
  - d. Infectious, contagious communicable diseases
  - e. Sexually transmitted diseases
  - f. Substance abuse (unless exceptions apply)
  - g. HIV/AIDS testing and treatment
  - h. Rape services for patients 12 years and older
  - i. Mental health records (see guide for involving parents/legal guardian's in the treatment)
  - j. Emancipated minors.

There are additional sensitive records that require special procedures which are outlined in PACE's "Notice of Privacy Practices". If you have any questions about the sensitive records requirements, please see your supervisor or ask someone in Medical Records to address the issue.

### D. Consequences of a Breach of Patient Privacy

Breaching a patient's privacy under federal law may result in the following HIPAA Penalties (Note these fines are per violation):

CIVIL



- \$1,000/violation up to \$25,000 annually, if standard not known
- \$1,000/violation up to \$100,000 annually for reasonable cause
- And up to one-year imprisonment

#### CRIMINAL

- Willful neglect corrected - \$10,000/violation up to \$250,000/yr.
- And up to five years imprisonment if the wrongful conduct involves false pretenses
- Willful neglect not corrected - \$50,000/violation up to \$1,500,000/yr.
- And up to ten years imprisonment if the wrongful conduct involves the intent to sell, transfer, or use identifiable health information for commercial advantage, personal gain or malicious harm

Breaching a patient's privacy under California law may result in the following:

- Nominal damages \$1,000 without proof of any resulting harm or loss.
- Actual damages sustained and if negligent an administrative fine or civil penalty not to exceed \$2,500/violation
- Non-licensed health care professional:
  - Knowingly and willfully neglects – up to \$25,000/violation
  - For the purpose of financial gain – up to \$250,000/violation and subject to recovery of all profits from unlawful activity
- A licensed health care professional:
  - Knowingly and willfully neglects - first violation up to \$2,500/violation, second violation \$10,000/violation, on a third and subsequent violation \$25,000/violation.
  - For the purpose of financial gain – up to \$5,000/violation, second violation \$25,000/violation, on a third and subsequent violation \$250,000/violation and subject to recovery of all profits from unlawful activity
- In addition to any other remedies mentioned, compensatory/punitive damages \$3,000 and \$1,000 attorney fees
- A person or entity who is not permitted to receive medical information pursuant to the law and who knowingly and willfully obtains, discloses, or uses medical information without written authorization from the patient is liable for a civil penalty not to exceed \$250,000/violation.

In addition, breach of the California Consumer Privacy Act (CCPA) carries these fines and consumer damages:

#### CIVIL

- Intentional violations \$7,500/violation
- Other violations \$2,500/violation
- Statutory damages \$100-\$750/incident or actual damages whichever is greater.

Note in both cases the court will consider the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length



of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth to assess damages.

## **6. WHISTLE BLOWER POLICY**

It is the policy of PACE to promote and maintain a culture of open communication, compliance, and responsible behavior. In order to protect this culture, PACE does not tolerate retaliation including intimidation, threats, coercion, discrimination, and any other form of retaliation of any individual who raises questions or concerns, in good faith, about PACE's compliance with federal or state law or regulation or PACE's Employee Handbook, Standards of Conduct, Corporate Compliance Plan or policies and procedures.

PACE's "Non-Retaliation and Whistleblower Protections" compliance policy requires directors, employees and volunteers to practice the highest levels of business and personal ethics when conducting their duties and responsibilities and to report any suspected unlawful acts. This means that employees and other representatives of our organization must practice honesty and integrity in their job duties and comply with all applicable laws and regulations. This policy also explains how to report issues.

The objective of PACE's Whistleblower policy is to ensure confidential, anonymous reporting of suspected unlawful activity by any person employed by or acting on behalf of PACE so that PACE can take corrective action. While PACE recognizes that mistakes will occur, employees have an affirmative, ethical duty to come forward and report erroneous or suspected unlawful conduct so that it may be corrected. Each employee is considered a valued member of the PACE compliance team in helping PACE comply with all laws and regulations.

## **7. COMPLIANCE HOTLINE**

The purpose of a Hotline is to establish a confidential avenue for PACE employees and contractors to report suspected violations of compliance policies, laws and regulations, and/or unethical behavior.

### **A. Proper Uses of the Hotline**

The compliance hotline may be used to report any instance of noncompliance with a federal, state, or local law; other legal obligation; or any institutional policy or procedure. The following are examples of noncompliance that may be reported through the compliance hotline:

- Conflicts of interest or other unethical practices;
- Financial reporting or accounting irregularities;
- Fraud, theft, or embezzlement;
- Safety or environmental problems;



- Sexual harassment, sexual violence, domestic violence, dating violence, or stalking
- Threats to information security or data privacy;
- Unauthorized use of intellectual property;
- Violation of anti-discrimination or equal opportunity laws;
- Violation of HHS rules;
- Violation of tax laws or IRS regulations;
- Waste, abuse, or misuse of resources; and
- Workplace violence

B. The Compliance reporting can be accessed in two (2) ways:

- Phone: **1-866-818-6185** (Information retrieved from the voice message will be transferred to a Incident Reporting System (IRS) for Log and tracking purposes); or
- Intranet Web Portal: Incident Reporting System.

## **8. ADDRESSING INSTANCES OF NON-COMPLIANCE THROUGH APPROPRIATE DISCIPLINARY ACTIONS**

PACE's addresses disciplinary actions for non-compliance with all policies, codes of conduct and ethics, rules, regulations and laws. In order of increasing severity, disciplinary actions that may be taken (see the Personnel Handbook for details) include, but are not limited to:

- Oral warning;
- Written reprimand;
- Suspension;
- Termination.

## **9. ROLE OF VARIOUS PACE OFFICERS**

- SAFETY -
- SECURITY- It is the policy of PACE to comply with the requirements of the HIPAA Security Rule's Administration Safeguards by designating a Security Officer to oversee and implement all Security Rule policies and procedures. The designated Security Officer for PACE is the Chief Information Officer.
- PRIVACY - It is the policy of PACE to comply with the requirements of the HIPAA Security Rule's Administration Safeguards by designating a Privacy Officer to oversee and implement Privacy and Security Rule policies and procedures. The designated Privacy Officer for PACE is the Director of Ancillary Services.
- COMPLIANCE – It is the policy of the PACE to have a Compliance Officer to oversee the development and implementation of the PACE's Compliance Program and to ensure appropriate handling of instance of suspected or known illegal or unethical conduct and maintain the organization's compliance



with all laws, rules, codes, regulations, and policies. The designated Privacy Officer for PACE is the Chief Strategy & Compliance Officer, use the Compliance Hotline to report any reportable incidents.

## 10. RISK MANAGEMENT

What is risk? Risks are dangers that can hurt the business or organizations. They can harm people, buildings, infrastructure, finances, and the environment. Risk management helps prepare for the unexpected by providing a plan to follow. Risk management training:

- Improves patient safety
- Minimizes errors, system breakdowns, and harm
- Minimizes clinical risks and liability losses
- Creates opportunities to communicate with providers and staff
- Improves provider and staff satisfaction

The ultimate goal of risk management is to prevent harm and improve patient safety. This is done in multiple ways, here are the many “hats” of risk management (2018 ECRI Institute):

- Leader – Guides the risk management program, plan, and interfaces with all health center services and practices
- Educator – Develops, coordinates and presents risks management and patient safety trainings
- Analyst – Analyses adverse events, near misses, and claims; uses quality improvement tools to determine underlying operational and systematic causes of events and identifies high-risk areas
- Communicator – Generates and presents reports on harm reduction and performance goals to the Board and to key management staff
- Monitor – Monitors effectiveness of current programs, policies, and procedures in risk management plan; revises plan as needed
- Compliance Advocate – Facilitates organizational regulatory compliance and credentialing and privileging for clinical staff
- Investigator – Examines events, incident reports, complaints, near misses, and patient grievances and claims
- Safety Champion – Identifies and reconciles safety concerns; evaluates and advocates for a culture of safety

The Bottom Line: Core Elements of a Successful Risk Management Program

- Designated risk manager
- Written risk management plan
- Written risk management training plan
- Responsive to patient feedback
- Quarterly risk assessments
- Involvement of the health center board



- Annual risk management report to the health center board

Congratulations you have reached the end of your annual compliance training for Central Valley PACE.



**PACE EMPLOYEE & CONTRACT EMPLOYEE CERTIFICATION**

Please reply to questions, as appropriate and date, initial and print your name below to receive credit for completing the Annual Compliance Training:

**ATTESTATION FOR FRAUD, WASTE & ABUSE (FW&A) & GENERAL COMPLIANCE TRAINING**

As an employee or contracted employee of Central Valley PACE (PACE), I hereby attest that I have conducted appropriate education and training to identify, correct and prevent potential fraud, waste and abuse, as required by 42 CFR § 442.503, 42 CFR § 442.504, and California Health and Safety Code 1348(a).

Fraud, waste and abuse and general Compliance training must be completed by employees, contractors, providers/medical groups (including all employees) at time of hire/contract inception, and annually thereafter. Topics that should be addressed in a fraud, waste, & abuse educational program should include, but are not limited to the following:

- Definitions of Fraud, Waste & Abuse
- Overview of laws and regulations pertaining to Fraud, Waste & Abuse, including a brief synopsis of the requirements, and criminal and civil penalties related to
  - Federal and State False Claims Acts
  - Stark Law/ Anti-Kickback statute
  - HIPAA Privacy and Information Security Requirements
- Office of the Inspector General (OIG) Exclusion List (entities/individuals excluded from doing business with the Federal government)
- Policies and procedures to address Fraud, Waste & Abuse
- Process for reporting suspected Fraud, Waste & Abuse to PACE Compliance
- Protections for persons who report suspected Fraud, Waste & Abuse

The Centers for Medicare & Medicaid Services Medicare Learning Network provides educational products and training materials that inform health care professionals about Fraud, Waste & Abuse. A CMS approved training presentation can be accessed and downloaded from:

**CMS – Medicare Fraud & Abuse: Prevent, Detect, Report** - <https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/Downloads/Fraud-Abuse-MLN4649244.pdf>

CMS FW&A / Compliance Training - Date Completed: \_\_\_\_\_

By signing below, I attest that I have completed fraud, waste and abuse training as indicated above and am signing on behalf of myself.

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date:**



**PACE FIRST TIER, DOWNSTREAM, RELATED ENTITY CERTIFICATION**

Please reply to questions, as appropriate and date, initial and print your name below to receive credit for completing the Annual Compliance Training:

**CERTIFICATION FOR FRAUD, WASTE & ABUSE (FW&A) & GENERAL COMPLIANCE TRAINING**

As a first tier, downstream or related entity of Central Valley PACE (PACE), hereby attests that it has conducted appropriate education and training to identify, correct and prevent potential fraud, waste and abuse, as required by 42 CFR § 442.503, 42 CFR § 442.504, and California Health and Safety Code 1348(a).

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CMS FW&A / Compliance Training - Date Completed: \_\_\_\_\_

By signing below, I attest that I have completed fraud, waste and abuse training as indicated above.

\_\_\_\_\_  
**Group/Vendor/Contractor**

\_\_\_\_\_  
**Signature** **Print Name**

\_\_\_\_\_  
**Title** **Date**