

**St. Clair County
Community Mental Health Authority**

FY2023

**Corporate
Compliance Program
Plan**



CORPORATE COMPLIANCE PROGRAM PLAN

I. INTRODUCTION

The St. Clair County Community Mental Health Authority (SCCCMHA) Corporate Compliance Program Plan details the specific compliance principles, components, and activities of SCCCMA as a healthcare provider. SCCCMA promotes high quality services, tailored to the needs of the individual, provided by persons with a duty of care who adhere to the highest ethical standards. SCCCMA wishes to deter fraudulent activities, detect misconduct and prevent waste and abuse of government resources. The overall purpose of the SCCCMA Corporate Compliance Program is to act as an internal control.

Efforts to uncover fraudulent practices in the healthcare industry and to encourage public reporting of them were mandated in the 1996 Health Insurance Portability and Accountability Act (HIPAA). Following findings of fraud in several locations by the Office of the Inspector General (OIG), the components of a corporate compliance program acceptable to the federal government were articulated in several OIG Advisories. In February, 2006 the Deficit Reduction Act of 2005 made way for the creation of the Medicaid Integrity Program (MIP). The MIP was the first comprehensive federal strategy to prevent and reduce provider fraud, waste, and abuse. Together, along with the Code of Federal Regulations (CFRs), they call for a standard approach to Medicaid compliance and program integrity.

Corporate compliance plans are required for providers receiving more than five (5) million dollars in Medicaid funds. Program basics include:

- Designation of a compliance officer and compliance committee;
- Written compliance standards, policies, and procedures; well-publicized disciplinary standards for failure to comply;
- Conducting effective training and education for the compliance officer, senior management, and employees/contractors;
- Developing and maintaining effective lines of communication;
- Responding timely to detected offenses, implementing corrective action, and issuing discipline/fines as appropriate;
- Conducting internal monitoring and auditing;
- Staying current with the laws/regulations; and
- Dissemination of the contact information for reporting fraud, waste, and abuse to SCCCMA, Region 10 Prepaid Inpatient Health Plan (PIHP), and the Michigan Department of Health and Human Services (MDHHS) OIG.

The SCCCMA Corporate Compliance Program receives oversight from the Region 10 PIHP Corporate Compliance Office and is contractually required to provide regular reports on its compliance activities to the PIHP.

II. DEFINITIONS

Abuse: Provider practices that are inconsistent with sound fiscal, business, or clinical practices, and result in an unnecessary cost to the Medicaid program, or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards of care. It also includes beneficiary practices that result in unnecessary cost to the Medicaid program. (42 CFR § 455.2)

Fraud: An intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable federal or state law including but not limited to the Federal False Claims Act and the Michigan False Claims Act. (42 CFR § 455.2)

(per Michigan statute and case law interpreting same): Under Michigan law, a finding of Medicaid fraud can be based upon evidence that a person “should have been aware that the nature of his or her conduct constituted a false claim for Medicaid benefits, akin to constructive knowledge”. But errors or mistakes do not constitute “knowing” conduct necessary to establish Medicaid fraud, unless the person’s “course of conduct indicates a systematic or persistent tendency to cause inaccuracies to be present”.

Waste: Overutilization of services, or other practices that result in unnecessary costs. Generally, not considered caused by criminally negligent actions but rather the misuse of resources.

III. CORPORATE COMPLIANCE OFFICE AND COMMITTEE

SCCCMHA maintains a Corporate Compliance Committee to oversee the SCCCMHA Corporate Compliance Program. Members include SCCCMHA staff: the Chief Operating Officer/Corporate Compliance Officer (Privacy Officer), Information Technology Director (Security Officer), and Administrative Specialist (representing network management). The Committee is charged with developing and recommending an annual corporate compliance plan, including specific outcome goals and compliance improvement/assessment activities. The SCCCMHA Annual Corporate Compliance Plan is reviewed with the SCCCMHA Board of Directors.

SCCCMHA Corporate Compliance Officer functions have been assigned to the Chief Operating Officer who meets with the SCCCMHA Quality Improvement Committee (QIC) and/or SCCCMHA Board of Directors on a periodic basis to review compliance issues, advise regarding program policy, policy development, training, and other relevant issues. The SCCCMHA Corporate Compliance Officer reports to the SCCCMHA Chief Executive Officer and the SCCCMHA Board of Directors.

IV. FOUNDATION AND LEGAL BASIS OF PROGRAM

The SCCCMHA Corporate Compliance Program is founded on a) the ethical principles that form the basis of the SCCCMHA's culture, b) a body of laws which defines actions that constitute criminal behavior and establish civil and criminal penalties, and c) on regulations which implement federal and state law and prescribe financial sanctions, and/or civil and criminal penalties for violations.

A. Ethical Foundation and Principles:

The SCCCMHA subscribes to a unified Code of Ethics which was originally adopted in 1996 and is reaffirmed annually by the SCCCMHA Board of Directors. Compliance with this ethical foundation is reinforced through the staff evaluation process. Compliance with the ethical foundation by staff in contracted entities is monitored through the SCCCMHA Contract Monitoring process.

B. Legal Foundation:

The legal basis of the SCCCMHA Corporate Compliance Program centers around several federal and state statutes. It is the overall role of the laws to prevent and detect fraud, abuse, and waste.

- The Federal False Claims Act (1863): Permits individuals to bring action against parties which have defrauded the government and provides for an award of half the amount recovered. The Act contains protection from recrimination against those who report, testify, or assist in investigation of alleged violations (whistleblowers), and provides a broad definition of "knowingly" billing Medicaid or Medicare for services which were not provided, not provided according to requirements for receiving payment, or were unnecessary. The most common criminal provisions invoked in health care prosecutions are prohibitions against:
 - False claims
 - False statements
 - Mail fraud and wire fraud

Penalties are:

- 5 years imprisonment
 - Fine of \$250K for an individual or \$500K for an organization, or 2 times the gross gain or loss from the offense, whichever is greater
 - Mandatory exclusion from participation in federal health care program
- The Michigan Medicaid False Claims Act (1977): Prohibits fraud in the obtaining of benefits or payments in connection with the medical assistance program; to prohibit kickbacks or bribes in connection with the program; to prohibit conspiracies in obtaining benefits or payments; to authorize the attorney general to investigate alleged violations of this Act; to provide for civil actions to recover money received by reason of fraudulent conduct; to prohibit retaliation (whistleblowers); to provide for certain civil fines; and to prescribe remedies and penalties.
 - The Anti-Kickback Statute (1972): Prohibits the offer, solicitation, payment or receipt of remuneration, in cash or in kind, in return for or to induce a referral for any service

paid for or supported by the federal government or for any good or service paid for in connection with an individual's service delivery. There is a penalty for knowingly and willfully offering, paying, soliciting or receiving kickbacks; violations are felonies; and maximum fine of \$25K, imprisonment of up to 5 years.

- HIPAA (1996): Expands the definition of "knowing and willful conduct" to include instances of "deliberate ignorance" such as failure to understand and correctly apply billing codes. The most severe HIPAA violations call for a prison sentence of up to 10 years.

C. Other Legal Authority:

Regulations which implement health care laws include:

- Affordable Care Act (2010);
- Social Security Act, 1903(m)(95)(i);
- Code of Federal Regulations (CFRs) implementing the Balanced Budget Act of 1996 with respect to the Management of Medicaid Managed Care Programs;
- Medicaid Integrity Program developed pursuant to the Deficit Reduction Act of 2005;
- Advisories issued by both the U.S. Department of Health and Human Services Office of Inspector General (OIG) and the Michigan Department of Health and Human Services OIG, for the conduct of fraud and abuse compliance programs;
- Guidelines for Addressing Medicaid Fraud and Abuse in Managed Care, issued by both the U.S. Department of Health and Human Services and Michigan Department of Health and Human Services; and
- Michigan Mental Health Code (1974; 1996) and Mental Health Administrative Rules, as promulgated by the State of Michigan.

V. **FUNCTIONS**

These functions include the fundamental elements that together build an effective corporate compliance program. Functions include ongoing activities in the following areas.

1. Assessment of Risk:

The SCCCMHA Corporate Compliance Officer is responsible for ensuring that practices of both direct operated and contracted service providers are such so that the risk of fraud, waste, and abuse is understood and minimized. Areas of potential risk include the following:

- ***Network management/contracting issues.*** This may include the potential that subcontractors have inadequate or falsified provider credentials, have falsified solvency requirements, engage in bid rigging or collusion among providers or violate standards related to conflict of interest or principal agent requirements. SCCCMHA is also at risk of having a service array which has inadequate capacity to provide the scope, intensity, and duration of services required by Medicaid regulations, or of paying for services at rates which have inadequate economic justification.
- ***Inappropriate utilization issues.*** When practices result in a pattern of denying eligible persons necessary services on a timely basis or providing services that cannot be

supported by medical necessity criteria, these practices may be considered Medicaid fraud. Other examples include delay in providing services, defining “appropriate care” in a manner not consistent with standards of care, inhibiting the appeal process, an ineffective grievance process, unreasonable prior authorization standards, provider incentives to limit care, and routine denial of claims.

- **Claims submission and billing procedures.** Examples include upcoding or inflating claims, double-billing, billing for ineligible individuals or for services not rendered, billing for unnecessary services, or inadequate documentation of services provided.
- **Failure to meet other requirements** of federal or state law and regulations, including the Balanced Budget Act and HIPAA.

Although embezzlement and theft are clear violations of law, they are generally not within the scope of activity of the SCCCMHA Corporate Compliance Program, unless one of the risk areas defined above is the mechanism for carrying out the embezzlement/theft.

SCCCMHA, in accordance with “Security Standards for the Protection of Electronic Protected Health Information,” found at 45 CFR Part 160 and Part 164, Subparts A and C, completes a HIPAA Security Risk Assessment/Analysis.

The SCCCMHA HIPAA Security Risk Assessment, which incorporates Meaningful Use (MU), is completed annually, generally in December. Following the Risk Assessment, a SCCCMHA HIPAA Risk Management Plan is developed to assist in management of identified risk areas. Goals and recommendations based on the findings of the Risk Assessment are followed up by the SCCCMHA Privacy & Security Committee with ongoing reports of progress provided to the SCCCMHA Quality Improvement Committee (QIC).

2. Policy and Procedure Development, Review and Revision:

The SCCCMHA Corporate Compliance Officer, with the input of the QIC, Region 10 PIHP, and other resources, will determine what policies, if any, need to be developed or revised to augment practices already in place to help ensure legal compliance.

Current SCCCMHA policies include:

- Conflict of Interest (01-001-0030)
- Corporate Compliance Complaint, Investigation, & Reporting Process (01-002-0020)
- Grievance Process (02-001-0040)
- Appeal Process & Second Opinion (02-001-0045)
- Utilization Management (02-003-0011)
- Claims Verification (02-003-0020)
- Protected Health Information – Privacy Measures (08-002-0005)
- Health Care Information Privacy & Security Measures (HIPAA) (08-002-0006)
- Electronic Health Record Management (08-003-0005)

3. Prevention Activities/Training:

The SCCCMHA Corporate Compliance Officer ensures initial orientation and ongoing training are conducted.

- All employees, direct and contractual, are trained initially and annually; each new employee of SCCCMHA is provided with written information and discussion on an individual basis as part of the new employee orientation. Training materials include the compliance training information received from Region 10 PIHP. In addition to training in corporate compliance, HIPAA and confidentiality (recipient rights), staff are asked to sign a separate attestation that they understand these training concepts, laws, and regulations, including the limitations of the scope of their specific job tasks and “need to know.” This attestation reinforces for staff the importance of adhering to these concepts and provides another opportunity for questions.
- Contract provider entities are responsible for training their staff, or may request SCCCMHA to provide this training on its behalf. Reporting of the training is included in quarterly performance indicators. Documentation of this training is to be kept with contract provider personnel files, forwarded as requested and is reviewed by SCCCMHA staff during contract monitoring.
- Periodic corporate compliance communications are issued to both direct and contractual employees as compliance reminders or when a specific compliance issue arises.

The IT Director/Corporate Compliance Security Officer, develops an annual IT Plan based on specific IT needs identified at SCCCMHA, changes in the field of technology and security, and outcomes of the HIPAA Security Risk Assessment. Information Technology projects and tasks are designed and implemented with the goal to support services and build efficiency while never compromising security of information. The IT Director is always reviewing, testing, and upgrading systems to prevent them from becoming vulnerable to breach or loss of information.

4. Ensuring that Information Regarding Current Law and Regulation is Disseminated:

The SCCCMHA Corporate Compliance Officer is responsible for reviewing all new compliance related laws, regulations, and official interpretations of law, and regulations which are issued by state and federal agencies for the network. Administrative memos (including e-mails) to employees and/or policy alerts will be issued as appropriate.

5. Detection Activities:

The system for detecting noncompliance has two (2) components:

- The first is a body of auditing and review mechanisms conducted by SCCCMHA staff. These auditing reviews include: Contract Monitoring reviews; Medicaid Claims Verification reviews and Utilization Management reviews. All audit functions are part of the overall SCCCMHA Corporate Compliance Program. Reviewers will report the presence of issues that require investigation from a compliance perspective.
- The second component is a mechanism for confidential reporting of suspected incidents of noncompliant behavior. Staff are also assured that allegations will be held in confidence, to the limit allowed by law, that they will not be penalized for reporting suspected incidents, and that fair and objective investigation of all allegations will be conducted prior to any action.

6. Investigation, Disciplinary Activity, and Disclosure Activities:

SCCCMHA undertakes investigative activities when 1) a report of suspected noncompliance is received (either in writing or verbally); 2) a staff of the corporate compliance office identifies an issue of suspected noncompliance; or 3) a preliminary review of audit and/or monitoring data indicates reasonable cause to suspect noncompliance is occurring. Documentation of all investigations and outcomes is maintained. SCCCMHA reports to the Region10 PIHP and/or MDHHS as required.

7. Assessment and Evaluation of SCCCMHA Corporate Compliance Program:

The annual assessment of the SCCCMHA Corporate Compliance Program will determine whether the required elements have been implemented and whether activities have resulted in meeting the established goals. Key indicators:

- Analysis of reports generated as part of the Medicaid Claims Verification reviews and Utilization Management reviews to identify potentially abusive claims payment and service provision practices;
- Analysis of grievance and appeal activities;
- Analysis of complaints related to over or under utilization, denial of access, or denial of choice;
- Analysis of all allegations of abuse, waste, and/or fraud;
- Analysis of all complaints relating to HIPAA violations;
- A review and analysis of compliance activities and provider agencies via the annual contract monitoring process.

The SCCCMHA Corporate Compliance Committee shall complete an annual corporate compliance report covering the fiscal year that is ending and develop an annual corporate compliance plan for the coming fiscal year. These documents are presented to the SCCCMHA Board of Directors.

Attachment:

A. SCCCMHA Corporate Compliance Committee FY 2023 Goals

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St. Clair County CMH Authority
QUALITY IMPROVEMENT PLAN: FY 2023

-- Corporate Compliance Program Annual Goals --

PRIORITY GOALS/KEY TASKS	ACCOMPLISHMENTS
1. Report quarterly on corporate compliance complaints; identify trends (St. Clair County CMHA). <i>(Corporate Compliance Plan)</i>	
2. Report quarterly on Program Integrity activities (i.e., tips/grievances received, data mining, claims analysis, audits, overpayments collected, identification and investigation of fraud, waste, abuse, etc.). <i>(Corporate Compliance Plan)</i>	
3. Report quarterly on grievance and appeals activities. <i>(Corporate Compliance Plan)</i>	
4. St. Clair County CMHA Corporate Compliance Committee to meet quarterly or more frequently as deemed necessary. <i>(Corporate Compliance Plan)</i>	
5. Monitor and report any legal/regulatory changes. <i>(Good administrative practice)</i>	
6. Monitor and report on debarred, suspended, or otherwise excluded (from participation in any federal healthcare program) providers. <i>(CFR requirement 438.610)</i>	
7. Provide training and education on corporate compliance, including HIPAA. <i>(CFR requirement 438.608)</i>	
8. Monitor technology use and needs as they relate to PHI and HIPAA. <i>(Corporate Compliance Plan)</i>	
9. Monitor subnetwork providers' corporate compliance activities. <i>(Corporate Compliance Plan)</i>	
10. Conduct annual evaluation of the Compliance Plan; report to St. Clair County CMHA Board. <i>(Corporate Compliance Plan)</i>	

Note: Claims verification and under/over utilization reported under St. Clair County CMHA Utilization Management, although part of St. Clair County CMHA Corporate Compliance Plan and quarterly Program Integrity Reports.