

A look behind the curtain: Life under a corporate integrity agreement for one public health care provider

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In September 2015, North Broward Hospital District (Broward Health) [settled](#) a *qui tam* (whistleblower) lawsuit with the U.S. pursuant to which Broward Health paid a \$69.5 million settlement. The government had alleged that Broward Health provided compensation to nine employed physicians that exceeded the fair market value of their services and that the arrangements with these physicians violated the Stark Law and the False Claims Act. As part of the settlement, Broward Health agreed to enter into a corporate integrity agreement (CIA) with the Office of Inspector General (OIG).

The five-year CIA imposes compliance obligations on Broward Health that are designed to promote Broward Health's "compliance with the statutes, regulations, and written directives of Medicare, Medicaid, and all other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f))." Among the requirements of the CIA are that (1) Broward Health establish a tracking system for its "Focus Arrangements" with all physicians (and their immediate family members) and other entities who are referral sources for Broward Health, and (2) Broward Health engage an independent review organization (IRO) to perform an "Arrangements Review" of Broward Health's systems, processes and policies/procedures for initiating, reviewing, approving and tracking arrangements as well as a review of 50 randomly-selected Focus Arrangements to determine whether Broward Health complied with the required procedures for such arrangements and whether the arrangements complied with applicable legal requirements. The CIA also imposes requirements on Broward Health's board and certain members of management.

Most of the time, once a health care provider settles a False Claims Act lawsuit and enters into a CIA, we don't hear much about the provider again as the provider moves forward with implementation of the CIA. That's not the case with Broward Health, however. Because Broward Health is a public entity, all of its trials and tribulations and internal conflicts have been playing out in a very public way.

Broward Health has remained in the headlines since it settled the lawsuit and signed the CIA. Following settlement of the lawsuit and renegotiation of a number of physician contracts as part of implementation of the CIA, its then-CEO, Dr. Nabil El Sanadi, committed suicide in January 2016. In June 2016, the Broward Health board made news, because its then-chief compliance officer refused to provide documents to the IRO to monitor and confirm Broward Health's compliance with certain aspects of the CIA. Following information that Broward Health was not cooperating with its IRO, OIG personnel showed up at Broward Health's corporate offices for a site visit to review Broward Health's implementation and compliance with the CIA. An interim CEO, Pauline Grant, was named in March 2016, but the Broward Health board fired Ms. Grant in December 2016 over suspicions of her involvement in a kickback scheme related to distribution of time on the hospital's paid call emergency room schedule. In December 2016, Broward Health notified the OIG that it probably violated the Anti-Kickback Statute in connection with how physicians were assigned to the orthopedic and trauma call panel. In January 2017, Broward Health's board voted 4-0 to approve a resolution admitting that the board was not able to conclude that the Broward Health compliance program was effective in meeting the CIA obligations.

As directly stated in the Broward Health CIA, the board (or a committee thereof) is responsible for the following:

- a. meeting at least quarterly to review and oversee [Broward Health]'s compliance program, including but not limited to the performance of the Compliance Officer and Compliance Committee; and
- b. submitting to the Board and to the OIG a description of the documents and other materials it reviewed, as well as any additional steps taken, such as the engagement of an independent advisor or other third party resources, in its oversight of the compliance program and in support of making the resolution below during each Reporting Period.

And annually, the CIA requires the board to adopt a resolution, signed by each member of the board, summarizing its review and oversight of Broward Health's compliance with federal health care program requirements and the obligations of the CIA. That resolution is supposed to include at least the following language:

The Board of Commissioners has made a reasonable inquiry into the operations of [Broward Health]'s Compliance Program including the performance of the Compliance Officer and the Compliance Committee. Based on its inquiry and review, the Board has concluded that, to the best of its knowledge, [Broward Health] has implemented an effective Compliance Program to meet Federal health care program requirements and the obligations of the CIA.

Pursuant to the CIA, if the board is unable to provide such a conclusion in the resolution, the board shall include in the resolution a written explanation of the reasons why it is unable to provide the conclusion and the steps it is taking to implement an effective compliance program at Broward Health.

Instead of adopting the resolution confirming that Broward Health has implemented an effective compliance program, the board instead adopted the following resolution:

[Broward Health] has implemented a compliance program...that has been effective in meeting federal health care requirements, but [the board] is unable to conclude that the compliance program has been effective in meeting the obligations of [Broward Health]'s corporate integrity agreement.

The resolution also indicates that Broward Health had fallen short of its compliance obligations in the following three areas: (1) the performance of its former chief compliance officer; (2) implementing a system to track various payments; and (3) maintaining a disclosure log. Additionally, it lists the steps the board intends to take in the next year to come into compliance with the CIA.

This is not a one-time exercise for Broward Health. Under the terms of its CIA, Broward Health will have to go through this same process with its IRO, board and management annually for the next four years. Health care providers who have not experienced a CIA first-hand would be well-advised to heed the very public lessons being learned by Broward Health. Even providers who are not under a CIA should make efforts to ensure that they have implemented effective compliance programs that their boards and managers can confidently certify are effective in meeting federal health care requirements. One way to do this is to use the standards set forth in [OIG compliance program guidance](#) and recent CIAs for providers of the same or similar type, as these reflect what the OIG expects a compliance program to look like.

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