



INDEPENDENT REVIEW ORGANIZATION ARRANGEMENTS SYSTEMS REVIEW REPORT FOR THE THIRD REPORTING PERIOD

NOVEMBER 15, 2018

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TABLE OF CONTENTS

I.	INTRODUCTION	1
A.	BROWARD HEALTH'S COMPLIANCE CULTURE	1
B.	HISTORY OF OBSTRUCTIVE AND NONCOMPLIANT CONDUCT	2
C.	CHANGES IN BROWARD HEALTH'S SENIOR MANAGEMENT	5
D.	ARRANGEMENT SYSTEMS REVIEW REPORTS OF MATTERS IMPLICATING THE CIA.....	7
II.	EXECUTIVE SUMMARY	14
A.	SUMMARY OF INDEPENDENT REVIEW ORGANIZATION FINDINGS.....	14
B.	OBJECTIVE.....	19
C.	SCOPE OF REVIEW	19
D.	DOCUMENTATION REVIEWED AND PERSONNEL INTERVIEWED.....	21
III.	ARRANGEMENTS SYSTEMS REVIEW.....	24
A.	CENTRALIZED TRACKING SYSTEM.....	24
B.	TRACKING REMUNERATION TO AND FROM PARTIES TO FOCUS ARRANGEMENTS	32
C.	TRACKING SERVICE AND ACTIVITY LOGS	60
D.	MONITORING LEASED SPACE & PATIENT CARE ITEMS	64
E.	WRITTEN REVIEW AND APPROVAL PROCESS FOR ALL FOCUS ARRANGEMENTS	66
F.	COMPLIANCE OFFICER'S ANNUAL REVIEW & REPORTING	74
G.	IMPLEMENTATION OF RESPONSES FOR SUSPECTED VIOLATIONS OF ANTI-KICKBACK LAW AND STARK LAW	79
H.	ENSURING COMPLIANCE WITH NEW FOCUS ARRANGEMENT REQUIREMENTS	89

CERTIFICATION OF INDEPENDENCE

EXHIBIT A

EXHIBIT B

EXHIBIT C

EXHIBIT D

EXHIBIT E

EXHIBIT F

EXHIBIT G

EXHIBIT H

EXHIBIT I

EXHIBIT J

IRO FIRM AND TEAM MEMBER INFORMATION

I. INTRODUCTION

Following the settlement by and between North Broward Hospital District ("NBHD," "BH," or "Broward Health") and the United States Department of Justice ("DOJ") on behalf of the United States Department of Health and Human Services Office of the Inspector General ("OIG"), to resolve allegations that Broward Health violated the Stark Law and False Claims Act by engaging in improper financial relationships with referring physicians¹ and pursuant to the Corporate Integrity Agreement ("CIA"), effective August 31, 2015, Broward Health was required to take substantial internal systems and compliance corrective action measures, including the engagement of an Independent Review Organization ("IRO"). The CIA has been and is monitored by the OIG's Office of Counsel to the Inspector General ("OCIG"). Baker, Donelson, Bearman, Caldwell & Berkowitz, P. C. has been and is serving as the IRO. Under the CIA, the IRO presents its Third Annual Arrangements Systems Review Report.² As required by the CIA, the Arrangements Systems Review consists of a comprehensive review of all BH's systems, processes, policies, and procedures relating to the initiation, review, approval and tracking of thousands of contracts, which could result in a referral to or from the hospital system or any of its affiliates.

In addition to the Arrangements Systems Review described in Section II of this Third Annual Arrangements Systems Review Report, the IRO conducted Arrangements Systems Reviews of specific issues during the Third Reporting Period. The IRO's findings in its "Report on Broward Health North's Cancer Center, Hematology and Oncology Services and Hospice Services, dated June 1, 2018, its July 23, 2018 "Report on Consulting Arrangements" and the Broward Health Executive Management's August 15, 2018 Action and Response Memo are described in Section I, D. and are incorporated herein and made a part hereof.

A. BROWARD HEALTH'S COMPLIANCE CULTURE

As described by the OIG in its guidance and stated in various IRO Reports described below, BH's Senior Management should establish a "tone at the top" for a culture of compliance and the highest level of integrity. Instead, beginning with the first week our work began and during the three years in which we have served as IRO, we have endured efforts to obstruct, impair, and impede our work. We have identified and addressed the repeated efforts by various individuals in BH Senior Management and certain members of Board of Commissioners to disregard internal controls, including OCIG-approved BH Policies and Procedures, put in place to promote BH's compliance with its requirements under the CIA.

¹A more comprehensive review of the underlying government investigation, settlement, CIA, and details of BH was presented in the IRO's October 7, 2016 Arrangement Systems Review and is not duplicated here.

²Our Report on the Arrangements Transactions Review for the Third Reporting Period of the CIA has been submitted in a separate document. As set forth below, we conducted the Arrangements Systems Review and Arrangements Transactions Review in a professionally independent and objective fashion as defined in the OIG Guidance on IRO Independence and Objectivity and Generally Accepted Government Auditing Standards.

Recently, we have been confronted again with serious challenges to our independence. Within the past month, the IRO has been compelled to write the Chair of the Compliance and Ethics Committee Nancy Gregoire to caution the Board of Commissioners of the seriousness of actions by a Commissioner relating to threats to our CIA-imposed duty of independence.³

At times during our work, OCIG has taken direct action to force BH to comply with the IRO and CIA-mandated processes. Most recently, on October 19, 2018, OCIG Senior Counsel and BH Monitor Laura Ellis wrote Chief Compliance Officer Nick Hartfield, in which she stated:

Compliance and a compliant culture begin at the top of any organization. The Board of Commissioners sets the compliance tone for Broward Health. I am thus very concerned that an individual commissioner of the North Broward Hospital District, who also serves as the Chairman of the Board, would reach out as an individual to both the General Counsel and outside counsel to demand that outside counsel cease investigating matters raised by the IRO's report. My concern is heightened because the IRO's report mentioned Commissioner Klein individually in a discussion of what information about the proposed CEO contract for Beverly Capasso was and not made available to the Board as a whole.

Ellis also advised that she was "very concerned with Broward Health's apparent inability to be in full compliance with the requirements of Section III.D of the CIA at the end of the Second Reporting Period." At the next meeting of the BH Board of Commissioners on October 31, 2018, the Board voted to terminate its GC and immediately thereafter, the CCO appeared before the Board to announce his resignation.

Stunningly, for a healthcare system which receives approximately 25 percent of its funding, or approximately \$325 million annually, from the Medicare and Medicaid programs,⁴ settled one of the largest Stark cases in American history, and is operating under a CIA with an IRO, specific individuals at BH recently have undertaken efforts and made public comments including misrepresentations that defy the OIG's authority to monitor and obstruct the IRO's work under the CIA. Regretfully, it is a part of a much-longer documented pattern of conduct.

B. HISTORY OF OBSTRUCTIVE AND NONCOMPLIANT CONDUCT

"Amongst the senior management team, there has been more than a lack of communication, there has been a pervasive pattern of personal destruction in which former and some current members of senior management team use public meetings, the media, self-serving reports disguised as work product, and frivolous "anonymous" complaints through the disclosure program as a means to falsely attack the character of, pressure, or aid in the termination of" members of the BH Board of Commissioners, senior management and others. "As to the lack of communication among the senior management team, the IRO found actions appear to be

³ Letter from IRO to Hon. Nancy Gregoire (Oct. 17, 2018). **Exhibit A** to this Report.

⁴ See NBHD "Statement of Revenues, Expenses, and Changes in Net Position, Year Ended June 30, 2017." The amount does not include funds BH receives from all of the federal government sponsored health care programs.

.....

routinely based upon self-interest, protection of department, not for the betterment of the system. The conduct identified by the IRO shows a lack of professionalism and collaborative work effort unseen by a team of lawyers, who regularly represent hospital systems, failing not only the patients it serves, but the taxpayers who help fund it." The sentences in this paragraph were written as part of the IRO's October 7, 2016 Report on the Arrangements Systems Review for the First Reporting Period. Regretfully, they remain true today. BH's Senior Management has dramatically changed. The BH Board of Commissioners has dramatically changed. The culture, which requires an uncompromising commitment to compliance and integrity, unfortunately has not.

A month after former BH Chief Compliance Officer ("CCO") Donna Lewis began serving as CCO, in April of 2011, BH received a subpoena from the OIG regarding physician contracts and relationships. It does not appear receipt of the subpoena had any impact whatsoever on the operations or effectiveness of the Compliance Program. Particularly based upon the seriousness of the issues identified in the subpoena, BH's Senior Management, and more specifically BH's CCO, disregarded what was essentially the first warning of fundamental problems within BH's utterly ineffective Compliance Department in May 2011 or over seven years ago.

On July 14, 2014, Alvarez and Marsal ("A&M") was engaged by and worked under the direction of BH's outside legal counsel to evaluate BH's Corporate Compliance and Ethics Program. The A&M review and report, completed in October 2014, was a seminal event in assessing the lack of effectiveness and inadequate prioritization of compliance by BH's then Senior Management. Unfortunately, based upon information provided to the IRO, the report was concealed from the BH Board of Commissioners and A&M's detailed recommendations, particularly those regarding essential CIA preparedness, were not acted upon in any substantive way by BH's Senior Management.

As noted above, the IRO views the timing of the A&M review and report, which was completed in October 2014, as a seminal event with regard to identifying the effectiveness and cultural importance of compliance by BH's then Senior Management. A&M's findings should have raised a second warning of the fundamental problems with BH's Compliance Program and Department. By a review of the A&M report, we are able to gain insight into institutional and system failures, which resulted in an incomplete, deficient, and ineffective Compliance Program. Based upon information provided to the IRO, it was obvious that the report was concealed from the then BH Board of Commissioners, and, disturbingly, the detailed recommendations, particularly those regarding essential CIA preparedness, made by A&M were not acted upon in any substantive way by BH's Senior Management. Ultimately, on or about August 31, 2015, BH reached a settlement with the DOJ on behalf of the OIG, to resolve allegations of violations of the Stark Law and the False Claims Act deriving from the same system weaknesses as were identified by A&M.

In the IRO's October 7, 2016 Report on the Arrangements Systems Review for the First Reporting Period, the IRO addressed BH's lack of cooperation, obstructive efforts and threats to the IRO's independence, citing numerous examples. Specifically, the IRO identified and documented BH Senior Management deliberately withholding and refusing to produce - in

violation of Florida law - easily obtained departmental evaluations, disclosure logs and other documents requested by the IRO, placing their personal interest above their fiduciary duties to BH and usurping the authority of the General Counsel ("GC"). The former CCO's intentional efforts to conceal the Disclosure Logs from the IRO and the government was focused on a complaint alleging a federal Anti-kickback Statute ("AKS") violation against the former CEO, and subsequently included her producing and misrepresenting false Disclosure Logs, which were ironically created in the Compliance Department, as the actual ones maintained in the database to the IRO. The AKS complaint and others were subsequently determined by BH to be Reportable Events, requiring disclosure to the OIG. The IRO also reported and documented BH personnel obstructing efforts to or failing to investigate compliance complaints regarding Focus Arrangements and matters alleging potential violations of law. Moreover, the former CCO intentionally, inappropriately, and repeatedly asserted the attorney-client privilege as a reason for failing to produce records in direct violation of the terms of the CIA.

The former CEO, former CCO, and a former Senior Vice President made inappropriate demands of the IRO, threatened our independence, used false anonymous complaints and media leaks and/or statements to discredit the IRO's work, and undertook substantive actions to try to obstruct, impede, and impair it. Due to the identified obstructive and noncompliant actions of then-BH Senior Management, the IRO addressed attempts to impede or improperly influence the independent nature of the IRO's work by establishing safeguards against the attempted threats to independence. In addition, the IRO informed OCIG of BH's conduct and the IRO's efforts to address and resolve these matters. Following an on-site visit by OCIG Senior Counsel Laura Ellis, she advised BH that the IRO was acting within the scope of its engagement under the CIA and insisted BH cooperate with the IRO. In addition, Ellis assessed and confirmed on other occasions, in writing, her satisfaction that the IRO possessed the necessary independence and qualifications to perform its work in the manner required under the CIA.

In the IRO's July 10, 2017 Report for the Second Reporting Period, the IRO addressed the actions of a Senior Vice President in the exercise of her authority to effect management overrides to obtain approximately \$2.1 million in payments in a year to a vendor under a \$246,000/year "agreement" without following BH's Compliance and Ethics Corporate Integrity Agreement Policies and Procedures applicable to Focus Arrangements, including Policy GA-004-441. The IRO found that the management overrides of BH's Compliance and Ethics CIA Policies and Procedures violated the fundamental principles of the Compliance and Ethics Program, the CIA, and potentially several federal criminal and/or civil laws.

The individuals serving as BH's Senior Management have dramatically changed. The membership of the BH Board of Commissioners has dramatically changed. The culture, which requires an uncompromising commitment to compliance and integrity, unfortunately has not. The time for the BH Board of Commissioners and its Senior Management to set the compliance "tone at the top" is long overdue. It is time for them to ensure the promotion of compliance becomes a part of the system's culture.

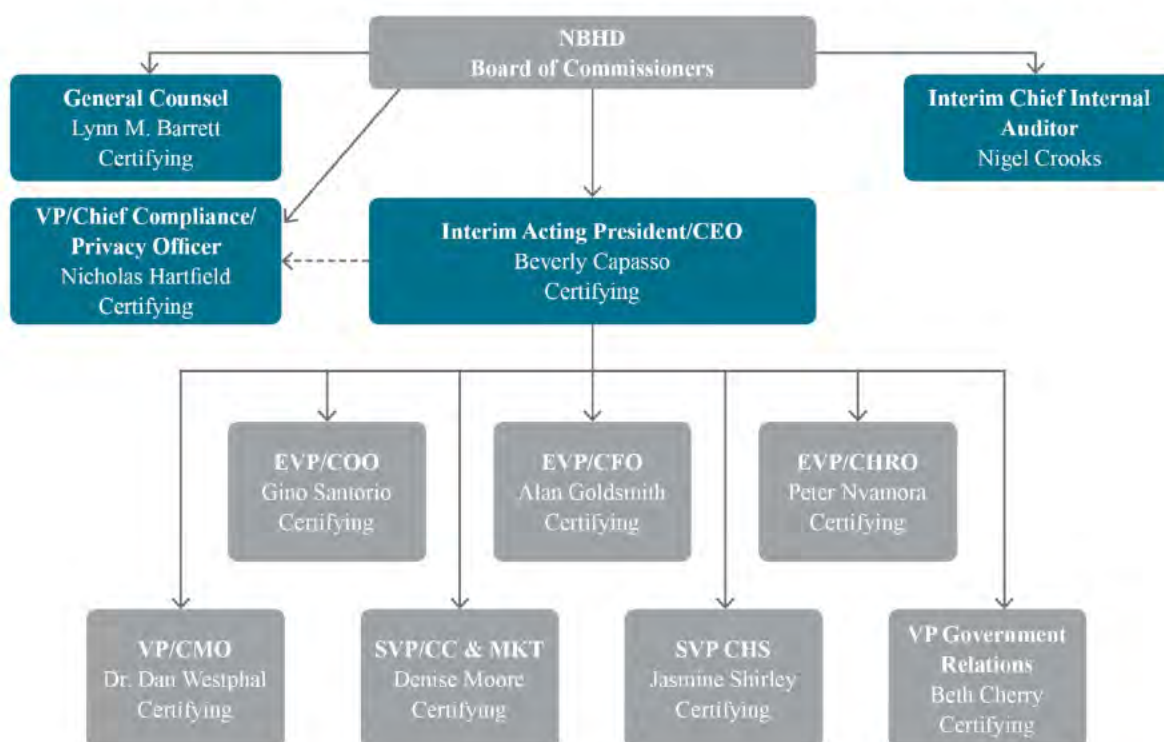
C. CHANGES IN BROWARD HEALTH'S SENIOR MANAGEMENT

BH is a special independent taxing district under Florida law created for the purpose of establishing and operating the necessary health facilities for the preservation of the public health and well-being of the citizens of the district. BH is governed by a Board of Commissioners (the "Board") composed of up to seven members appointed by the Governor of Florida.

A listing of the employees who are Certifying Employees and those who are required by Broward Health to sign "sub-certifications" upon which the Certifying Employees in part rely, is attached hereto on **Exhibit B**.

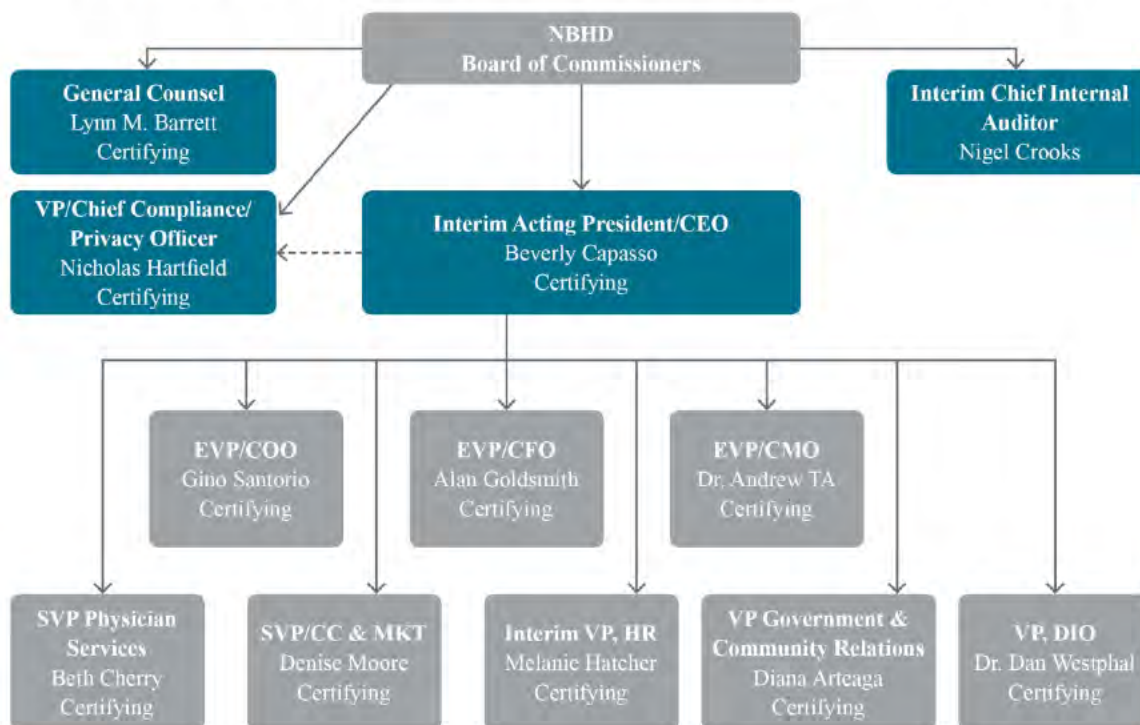
There have been significant changes in the BH Senior Management during the Third Reporting Period. As can be seen by the charts below, Broward Health continues to address Senior Management retention, transition, turnover, and replacement issues.

MANAGEMENT AT THE END OF THE SECOND REPORTING PERIOD



During the Third Reporting Period, the Board removed Beverly Capasso's interim status and she was designated as permanent President and CEO of BH. Executive Vice President of Human Resources Peter Nyamora resigned in July 2018 and was replaced by Melanie Hatcher.

MANAGEMENT AT THE END OF THE THIRD REPORTING PERIOD



After the Third Reporting Period, in October 2018, Beverly Capasso announced her resignation, which was expected to be effective January 3, 2019. On October 31, 2018, however, the Board of Commissioners appointed former Senior Vice President and Chief Operating Officer Gino Santorio to serve as Interim President and CEO. Capasso will remain with Broward Health to assist Santorio's transition. Also after the close of the Third Reporting Period, Nigel Crooks was named Chief Internal Auditor.

On October 31, 2018, the BH Board of Commissioners voted to terminate BH General Counsel Lynn Barrett and later that day, BH Chief Compliance Officer Nick Hartfield resigned.

D. ARRANGEMENTS SYSTEMS REVIEW REPORTS OF MATTERS IMPLICATING THE CIA

Section A of Appendix B of the CIA defines the scope of the Arrangements Systems Review as:

A review of BH's systems, processes, policies, and procedures relating to the initiation, review, approval, and tracking of Arrangements.

Section A. 1-9 of Appendix B of the CIA identifies nine enumerated categories for IRO review applicable to the Focus Arrangement Systems Review conducted during the Third Reporting Period:

Pursuant to the obligations set forth under the CIA, the IRO conducted mandatory non-discretionary Arrangements Systems Reviews of issues during the Third Reporting Period. The IRO submitted its findings relating to two matters to Broward and the OIG in (a) a June 1, 2018 "Report on BH North's Cancer Center, Hematology and Oncology Services and Hospice Services" and (b) a July 23, 2018 "Report on Consulting Arrangements." The IRO's reports with its findings concerning these issues are attached hereto as **Exhibit C and Exhibit D**. In consideration of the need for brevity, the exhibits and attachments to these reports are not attached. However, the reports, in their entirety, which have been previously submitted by the IRO to Broward Health and the OIG, are incorporated herein by reference and made a part of this Report. In addition, a copy of an August 15, 2018 "Executive Management" response to the IRO's July 23, 2018 Report on Consulting Arrangements is attached hereto as **Exhibit E**.

1. The IRO's "Report on BH North's Cancer Center, Hematology and Oncology Services and Hospice Services"

In the IRO's June 1, 2018 "Report on BH North's Cancer Center, Hematology and Oncology Services and Hospice Services," the IRO found that the Arrangements reviewed and described in the report clearly establish Focus Arrangements, which implicate the Anti-Kickback Statute and the Stark Law. The IRO recommended that Broward Health conduct an investigation of the issues identified in the report as required by the CIA. The CIA requires BH to develop and implement systems, policies, and procedures for implementing effective responses when suspected violations of the Anti-Kickback Statute and Stark Law are discovered, including disclosing Reportable Events and qualifying and repaying Overpayments, when appropriate. BH's Policy No.GA-004-242 was implemented to ensure compliance with the CIA and requires BH to conduct timely, thorough investigations of Compliance Issues and Ethics Issues and to take prompt corrective and/or disciplinary action.

2. The IRO's "Report on Consulting Agreements"

In the IRO's July 23, 2018 "Report on Consulting Agreements," the IRO found instances in which BH's Senior Management disregarded and attempted to circumvent the requirements of BH's Compliance and Ethics Policies and Procedures, which were approved by OCIG. Specifically, the requirements of Policy GA-004-41 were disregarded and not followed with regard to at least five financial arrangements. The IRO found that Broward Health's Senior

Management engaged in activities to circumvent BH's Arrangement Policies and Procedures and the terms of the CIA in the same fashion as identified in the IRO's October 7, 2016 Report and July 10, 2017 Report by overriding and or failing to follow BH's Compliance and Ethics Policies and Procedures, failing to meet the requirements for initiation, review and approval of Arrangements under the CIA, disregarding obligations created by the CIA and failing to fully respond to the IRO's request for production of documents.

3. BH's Executive Management's Response and the IRO's Subsequent Findings

In its August 15, 2018 "Executive Management" response,⁵ BH repeatedly noted several things, including: (1) the IRO identified and reviewed Arrangements, which were not Focus Arrangements as defined under the CIA; (2) the IRO's selection and review of the Arrangements were not "statistically valid;" (3) the IRO's determination of when the Reliance Standard Life Insurance Company ("Reliance") Arrangement was initially taken through the CIA-mandated process was incorrect by ten days; (4) BH should have been able to review the IRO's findings in draft form, working in a "collaborative manner prior to its issuance;" and (5) references to "factual errors." We will briefly respond to BH's repeated assertions. By doing so, we hope BH's Senior Management will have a better understanding of the mandatory non-discretionary CIA defined process the IRO has to follow, allowing BH and the IRO to develop better communications and a working relationship which does not threaten the IRO's independence.

The Executive Management response alleges that the contracts reviewed by the IRO were not Focus Arrangements. The IRO began and conducted the review within the scope mandated and defined in the CIA. Section A. 1-9 of Appendix B of the CIA requires the IRO to review nine enumerated categories. Two of the nine categories are specifically applicable to the matters covered in the report. The two categories govern the process for initiating Arrangements and the requirements for internal review and approval of all Arrangements.

"BH's systems, policies, processes and procedures for **initiating Arrangements**, including those policies that **identify the individuals with authority to initiate an Arrangement** and that specify the business need or business rationale required to initiate an Arrangement." CIA III. D. 1.e. and Appx. B, A.5.

"BH's systems, policies, processes and procedures for the internal review and **approval of all Arrangements**, including those policies that **identify the individuals required to approve** each type or category of Arrangement entered into by BH, the internal controls designed to **ensure that all required approvals are obtained**, and the processes for ensuring that all Focus Arrangements are subject to a legal review by counsel with expertise in the Anti-Kickback Statute and Stark Law." CIA III.D.1.e. and Appx. B, A.6.

Emphasis added.

⁵ The "Executive Management" response did not involve the participation of BH's then-General Counsel or then-Chief Compliance Officer.

As a result of the mandatory, non-discretionary, and clear requirements set forth in the CIA, the IRO was required to review the role of everyone, including BH member(s) of the Board of Commissioners and BH Senior Management who had "the authority to initiate an arrangement" and "the individuals required to approve" them. Pursuant to BH's Compliance and Ethics Policies and Procedures, which it is essential to remember were approved by OCIG, all new or renewed contracts are required to go through BH's contracting process for timely determination to be documented in the contract file as to whether the contract is a Focus Arrangement. The IRO's scope of review was to determine whether the contracts were submitted to Contracts Administration to go through BH's contracting process and whether Contracts Administration initiated the process, conducted the required assessments, compiled the required documents, and whether the required reviews were completed and all required approvals were obtained. As noted in the IRO report, BH Senior Management ignored the contracting process and by-passed the assessments required of contracts to determine if they pose Conflicts of Interest and whether the contracts were Focus Arrangements.

At the time of the IRO's review and with regard to numbers (1) and (3) above, the only contract, which had undergone and received a Focus Arrangement determination, was the Reliance Arrangement. The IRO noted the timing of it being taken through the process after the then-CCO learned of it. Contrary to assertions by BH, the numerous emails, including his November 11, 2017 email clearly indicated its status. That notwithstanding, the contents of the then-CCO's email were what was important to the IRO because it put everyone in BH's Senior Management in an undeniable position to know the OCIG-approved process, which had to be followed. It also put everyone in BH Senior Management in a position to know the process was not followed just a few months later as AON and Gallagher began working without their contracts' being taken through the OCIG-approved contracting processes.

We reviewed AON's and Gallagher's work because the OCIG-approved process for contract initiation, review and approval had unquestionably not been followed and a Focus Arrangement determination had not been timely made. We used restraint, as we should have under the CIA, in only addressing the process issues deriving from the companies' work, not undertaking a comprehensive review of the then-CEO's or other BH Senior Management pay issues. Candidly, they were of no concern to us. BH Senior Management's stated concern over the IRO's use of the term "purported" regarding the then-CEO's contract is misplaced. The IRO used the term in connection with its findings of inconsistencies with interviews, particularly the one of the then-CEO, and the finding that certain Board-directed obligations were not carried out. If the IRO believed something "untoward" occurred regarding the issue, we would have unequivocally written it, collaborating it with documents and interviews. Subsequent determinations of the AON and Gallagher contracts being determined Focus Arrangements were and are, therefore, immaterial. While the IRO might be able to understand the assertion of improper statistically valid sampling with regard to its Arrangements Transactions Review (in which the IRO evaluates 50 randomly selected Focus Arrangements for process improvements and/or deficiencies), the references to it are completely irrelevant to how the IRO's Systems Arrangements Reviews are conducted. In fact, BH's assertions cause the IRO to question the extent of how many vendors have been working and possibly paid by BH prior to Focus Arrangement determinations being made and therefore, outside the OCIG-approved process.

Throughout the response, BH's Senior Management repeatedly asserted the importance of the IRO sharing draft reports with them and otherwise, working collaboratively. While we conceptually understand BH's Senior Management's request, it suggests a misunderstanding of the IRO's mandatory role and the importance of specific CIA provisions regarding how its work is to be conducted. The CIA requires that the "IRO must perform the Arrangements Review in a professionally independent and objective fashion, as defined in the most recent Government Auditing Standards issued by the United States Government Accountability Office" ("GAO").⁶ The Generally Accepted Government Auditing Standards ("GAGAS") give examples of circumstances that create undue influence threats for an auditor or audit organization. GAGAS provides that "In all matters relating to the GAGAS engagement, auditors and audit organizations must be independent from an audited entity."⁷ GAGAS also provides that "Auditors and audit organizations should avoid situations that could lead a reasonable and informed third parties to conclude that the auditors and audit organizations are not independent and thus are not capable of exercising objective and impartial judgment on all issues associated with conducting the engagement and reporting on the work."⁸ Moreover, GAGAS mandates that "Auditors and audit organizations maintain their independence so that their opinions, findings, conclusions, judgments, and recommendations will not be viewed as impartial by reasonable and informed third parties."⁹ Providing a draft report to and working collaboratively with BH Senior Management would not only create substantive "appearance" and lack of objectivity issues for BH, the IRO and the "third party" OIG, but is clearly outside the scope of review the CIA contemplates. What cannot be lost on BH's Board of Commissioners or BH's Senior Management is the reason the OIG and IRO are undertaking their work and the scope of it is defined by the CIA.

The following GAGAS stated circumstances relating to independence give guidance to the IRO's approach in conducting reviews:

- a. External interference or influence that could improperly limit or modify the scope of an audit or threaten to do so, including exerting pressure to inappropriately reduce the extent of work performed in order to reduce costs or fees.
- b. External interference with the selection or application of audit procedures or in the selection of transactions to be examined.
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- d. External interference over the assignment, appointment, compensation, and promotion.
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⁶ CIA, p. 41.

⁷ GAGAS §3.18.

⁸ GAGAS §3.19; *see also* GAGAS §3.21.

⁹ GAGAS §3.22.

- f. Authority to overrule or to inappropriately influence the auditors' judgment as to the appropriate content of the report.
- g. Threat of replacing the auditors over a disagreement with the contents of an auditors' report, the auditors' conclusions, or the application of an accounting principle or other criteria.
- h. Influences that jeopardize the auditors' continued employment for reasons other than incompetence, misconduct, or the need for audits....¹⁰

Despite its best efforts, the IRO cannot determine with any specificity, the basis for any substantive "factual errors" in its July 23, 2018 "Report on Consulting Agreements" arising from BH Executive Management's response.

4. BH's Failure to Investigate the IRO's Findings

The IRO finds BH's reaction to the July 23, 2018 "Report on Consulting Agreements" to be disappointing. As set forth in greater detail in its October 17, 2018 letter to BH Commissioner Nancy Gregoire as the Chair of Compliance and Ethics Committee and Legal Committee, the individual actions, statements, and recommendations of the BH Chairman of the Board of Commissioners following the issuance of the July 23, 2018 Report was evaluated by the IRO as a threat to our independence. The IRO stands by its findings in the letter that the Chairman acted individually and without Board authority when he directed McGuire Woods, which like other firms had been routinely engaged by the then-GC to conduct a supplemental investigation into the IRO's July 23, 2108 report, to stop its work. The Chairman also sought to limit the investigative authority of BH's General Counsel and Chief Compliance Officer in direct contradiction to BH's Policies and Procedures, demanded without legal authority that the IRO preserve documents for BH, and challenged the authority of the OIG, among other actions. The actions of the Chairman of the Board and other actions by the then-CEO, are indicative of not only their individual lack of commitment to a culture of compliance, but are clearly defiant of the OIG and obstructive of the IRO's work. The individual's conduct required OCIG to address it.

The IRO finds it important to note that on October 19, 2018, OCIG Senior Counsel and BH Monitor Laura Ellis wrote the then CCO Hartfield. In her letter, a copy of which is attached as **Exhibit F**, Ellis addressed the actions of the Chairman of the Board and BH Senior Management and voiced her concern that the Chairman of the BH Board of Commissioners would reach out, in his individual capacity and without Board authority, to both the GC and outside counsel to demand that outside counsel cease investigating matters raised by the IRO's report. Ellis also advised that she was "very concerned with Broward Health's apparent inability to be in full compliance with the requirements of Section III.D of the CIA at the end of the Second Reporting Period."

¹⁰ GAGAS §A3.07a., b., f-h.

The CIA specifies that BH "shall develop, implement and distribute a written Code of Conduct to all Covered Persons." *See* CIA p. 8. The Code of Conduct emphasizes that the Board of Commissioners is expected to provide leadership and have special obligations with respect to promoting compliance and ethics, including the review and oversight of matters related to compliance with federal health care program requirements and the obligations of the CIA. Moreover, as Covered Persons under the CIA, the individual members of the Board of Commissioners, BH Senior Management, and every employee must comply with the CIA, BH's Code of Conduct and Policies and Procedures. The Code of Conduct provides that BH's "Corporate Compliance and Ethics Program is intended to demonstrate Broward Health's commitment to the highest standards of ethics and integrity and to achieving one hundred percent compliance among all workforce members within our system." *See* BH Code of Conduct, October 2015, p.23. Significantly, it also provides that "we have adopted this Code of Conduct to reflect our values and demonstrate our commitment to meeting the highest standards of compliant and ethical conduct. Our Code of Conduct rests on our commitments to....standards, honesty and integrity, transparency.....compliance and ethics." *See* BH Code of Conduct, October 2015, p.1.

The Code of Conduct stresses BH's commitment to compliance by noting: "When an internal investigation finds a violation, the General Counsel will initiate appropriate corrective action." *See* BH Code of Conduct, October 2015, p.24. As a result, the BH Code of Conduct requires, where necessary, internal investigations will be initiated and significantly, the General Counsel is designated and required to take appropriate corrective action. The Code of Conduct adds: "Possible corrective action include, but are not limited to, refunds of any overpayment received, workforce member disciplinary action up to and including termination and reporting to the appropriate federal or state authorities." *See* BH Code of Conduct, October 2015, p.24.

Identification and resolution of compliance and ethics issues may necessarily require internal investigations be conducted under BH's Corporate Compliance and Ethics Program. It is Broward Health's policy that all "workforce members" are required to promptly report upon discovery all suspected and actual violations of Broward Health's Corporate Compliance and Ethics Requirements or of applicable federal and state laws and regulations. Thereafter, any suspected violations are to be promptly and thoroughly investigated with appropriate corrective action implemented. *See* Policy No. GA-004-233. In accordance with the Response and Prevention of Offenses Policy, a Preliminary Review of a Compliance issue including suspected and actual violations of Broward Health's Corporate Compliance and Ethics Requirements or of Applicable Federal and State Requirements is to be conducted by either the General Counsel, if the Compliance Issue has the potential to expose Broward Health to criminal, civil, or administrative penalties, or the Chief Compliance Officer, if the Compliance Issue does not have such potential. *See* Policy No. GA-004-242. The Preliminary Review will determine the factual basis of the Compliance Issue, and will determine whether a further Focused Investigation is necessary. The Chief Compliance Officer or General Counsel or, their designee, will establish timeframes for completing the Preliminary Review and Focused Investigation, if any, determining corrective action, and issuing a summary report as part of its Preliminary Review of each instance of reported Compliance Issues.

Importantly, all workforce members, including the members of the Board of Commissioners and BH Senior Management, are required to fully cooperate with internal investigations conducted under the Corporate Compliance and Ethics Program. The Code of Conduct specifies that "It is important to remember that you must fully cooperate with any internal investigation...." See BH Code of Conduct, October 2015, p. 23.

Deficiency: BH Commissioner Klein's actions to direct BH's then GC and her designee, McGuire Woods, to cease its investigative work requested by the GC under Policy GA-004-242 were in violation and in direct contradiction of BH's Policies and Procedures, including Policy GA-004-233 and BH's Code of Conduct.

Deficiency: BH Commissioner Klein's and the CEO's actions to limit the investigative authority of BH's GC and CCO were in violation and in direct contradiction of BH's Policies and Procedures, including Policy No. GA-004-233, Policy GA-004-242, and BH's Code of Conduct.

Deficiency: BH Commissioner Klein's and the then CEO's failure to cooperate with the then GC initiated internal investigation being conducted by McGuire Woods by refusing to be interviewed were in violation and in direct contradiction of BH's Policies and Procedures, including Policy GA-004-242, Policy GA-004-233 and BH's Code of Conduct.

The IRO is not aware that the Board of Commissioners or BH Senior Management has responded to Ellis. It does not appear that the Board of Commissioners or BH Senior Management acted on Ellis' concerns. To the contrary, at the next meeting of the BH Board of Commissioners on October 31, 2018, the Board voted to terminate its GC and shortly thereafter, the CCO appeared before the Board to announce his resignation. The resignation of the CCO placed BH in immediate jeopardy of a breach of the CIA by failing to maintain a COO during the term of the CIA.

II. EXECUTIVE SUMMARY

A. SUMMARY OF INDEPENDENT REVIEW ORGANIZATION FINDINGS

The Board of Commissioners and Senior Management team continue to be confronted with systemic challenges to ensuring compliance and addressing institutional deficiencies.¹¹ The IRO identified numerous crucial systems deficiencies, which were found to be ineffective or not implemented. Broward Health's decision to transition its contracting system from MediTract to Compliance 360 ("C360") will likely foster the goal of maintaining a more complete history and documentation of contract review and approval. During the Third Reporting Period, however, the hospital system continues to struggle with incomplete contract files and questions as to whether all Focus Arrangements are in C360. In identifying substantive deficiencies, the IRO believes this Report can be used, in part, as a road map to correcting compliance problems.

Broward Health implemented a new payment system, PO25, for certain payments to non-employee physicians. Imbedded in PO25 are effective internal controls. Broward Health has not, however, ensured a comprehensive system of internal controls applicable to all types of payments to physicians and non-physician referral sources. With regard to the tracking of service and activity logs, Broward Health lacks a systemic method of ensuring that a physician is not compensated under multiple contracts for work claimed to have been performed during an identical date and time period.

Broward Health implemented a new process for the review and approval of prospective Focus Arrangements. However, the new procedures were never formalized into an approved Compliance Policy.

Many challenges faced by the Compliance Department in previous periods persisted throughout the Third Reporting Period. The Compliance Department failed to timely review the management exceptions contained in the Monthly Compliance and Ethics Report and to open disclosure activities in the Disclosure Log to be assessed and/or investigated. The IRO is concerned about the aging of disclosures, which remain open on the Disclosure Log in Comply Track and the time it takes Broward Health to assess, investigate, resolve and close disclosure activities. The Compliance Department again failed to conduct a Risk Assessment during the Third Reporting Period.

1. Deficiencies in Centralized Focus Arrangements Tracking System

a. Broward Health has not ensured that it is maintaining a centralized tracking system for all existing and new or renewed Focus Arrangements as required by § III.D.1.a. and Appendix B §A.1. of the Corporate Integrity Agreement.

¹¹ Between the beginning of the Third Reporting Period and October 31, 2018, BH continued its pattern of senior management turnover, including the CEO, COO (to CEO), GC, CCO, and HR. Since the IRO's work began, BH has had five CEOs (Kevin Fusco twice), four COOs, and multiple other changes. The IRO recognizes the inherent problems which arise from senior management instability.

b. Broward Health's centralized contracts database for Focus Arrangements has incomplete contract files lacking essential supporting documentation and work flow histories. The failure to maintain essential supporting documentation and work flow histories in C360 results in noncompliance with § III.D.1.a. and Appendix B §A.1. of the Corporate Integrity Agreement and Policy GA-004-441 IV.B.8 and VII.

c. Contract Administration has not ensured that all required documentation, including contract workflow and supporting documentation, is maintained in the Focus Arrangements contract files, as required by Policy GA-004-441 IV.B.8.

2. Deficiencies in Controls for Tracking Remuneration to and from All Parties to Focus Arrangements

a. Broward Health maintains no formal policy or comprehensive listing of internal controls for the tracking of remuneration relating to Focus Arrangements, which is recognized by all departments system wide. Therefore, Broward Health fails to comply with Corporate Integrity Agreement § III.D.1.b and Appx.B.A.2 by employing procedures to ensure tracking of remuneration to and from all parties to Focus Arrangements.

b. Broward Health has not ensured that functioning internal controls are in place to protect all payment types from the risk of extra-contractual payments and, therefore, fails to comply with Corporate Integrity Agreement § III.D.1.b and Appx.B.A.2 by employing procedures to ensure tracking of remuneration to and from all parties to Focus Arrangements. .

c. Some of the internal controls listed in the Tracking Document¹² are not functioning to guard Broward Health's payment systems and, therefore, Broward Health fails to comply with Corporate Integrity Agreement § III.D.1.b and Appx.B.A.2 by employing procedures to ensure tracking of remuneration to and from all parties to Focus Arrangements.

d. A full review of all quality measures contained in physician contracts is not being conducted and reported for the quarter within 30 days of the end of the quarter in accordance with contract terms and in accordance with Internal Control No. 14 in the Tracking Document.

e. Reconciliation calculations are not conducted on a quarterly or annual basis to determine any set-off payments consistent with the terms of the contract in accordance with Internal Control No. 39 in the Tracking Document.

f. Regional Managers of Materials did not have access to C360 to verify that pricing is consistent with the terms of the contract, as required by Internal Control No. 72 of the Tracking Document.

¹² After the Corporate Integrity Agreement was executed in August 2015, Broward Health's management team and legal counsel drafted a listing of internal controls entitled, "Tracking Remuneration To and From Focus Arrangements" ("the Tracking Document").

g. Broward Health implemented PO25 in the Third Reporting Period without formalizing it into a written policy as required by with Corporate Integrity Agreement § III.D.1.b., Appx. B § A.2. and Policy No. GA-004-236.

h. At the end of the Third Reporting Period, payments to some Focus Arrangement providers and vendors were made without having a PO25 in place.

i. "One time purchase orders" were used to make multiple payments without a contract in place with the payee.

j. While Tableau is used by Broward Health to assemble a comprehensive listing of all payments made by Broward Health to a provider or vendor from all Broward Health payment systems, Tableau is not accurately associating payments with contracts. During the Third Reporting Period, Tableau was only used on a pilot basis, even though it was being relied on as an internal control for which there were no substitute internal controls in place during the pilot period.

k. C360 does not provide an automatic notice of contract termination to Accounts Payable and this remains a system weakness.

l. Broward Health does not systemically require payors to report to Compliance all payments made without a contract in place.

m. During the Third Reporting Period, Broward Health did not have internal controls in place to compensate for Tableau's inability to accurately tie payments to specific contracts for a particular physician or non-physician referral source, system wide.

n. No Focus Arrangements reviews were conducted on one time purchase orders.

3. Deficiencies in Tracking Service and Activity Logs

a. While Broward Health has successfully employed Tableau to aggregate payments made under all contracts, system wide, to a provider, Broward Health lacks a mechanism to tie aggregate payments to particular contracts system wide.

b. Broward Health lacks a systemic method of assuring that a physician is not compensated under multiple contracts for work claimed to have been performed during an identical date and time period.

c. Broward Health does not have a policy for simultaneous call coverage.

4. Deficiencies in the Written Review and Approval Process for All Focus Arrangements

a. Broward Health followed a substantively and materially different process and order of steps for the review and approval of Focus Arrangements during the latter half of the Third Reporting Period than that which is set forth in Policy GA-004-441 *Physician and Non-Physician Financial Arrangement Review, Approval, Tracking and Monitoring (Rev. Oct. 2017)*. The new process was not formalized into a written policy in violation of Policy GA-004-236.

b. Policy GA-004-441 was not amended to correspond to the "Road to Contracts" process, which was adopted by Corporate Resource and Materials Management ("CRMM") under the direction of the Vice President of Financial Operations.

c. Broward Health has been operating outside of the process and procedures set forth in Policy GA-004-441 since the changes to the C360 workflow were implemented on January 8, 2018. As a result, Broward Health varied from and did not follow applicable Broward Health Policies and Procedures for the Focus Arrangements identified on the FA List, which were entered into or renewed after January 8, 2018, resulting in violations of CIA Section III.D.1.e., and Sections B.A.5 and C. 2. of Appendix B.

d. The IRO finds that Broward Health's changes to the C360 workflow implemented on January 8, 2018 resulted in material changes made during the Third Reporting Period to the Arrangements systems, processes, policies and procedures for the initiation, review and approval of Focus Arrangements as set forth in Policy GA-004-441.

e. Contracts, which go through the auto-renewal process, were not subjected to the full contract initiation, review and approval process required by Policy GA-004-441.

f. Annual Conflict of Interest form disclosures and annual Financial Disclosures submitted to Broward Health by employee and non-employee physicians in November 2017 were not reviewed by the Chief Ethics Officer or the Ethics Manager for the existence of an actual, potential or appearance of a Conflict of Interest.

5. Deficiencies in the Compliance Officer's Execution of Responsibilities to Update Compliance Policies and Procedures

a. The findings in the Corporate Compliance Annual Review Report: Focus Arrangement Audit, dated July 19, 2018, support the IRO's independent conclusion that during the Third Reporting Period Broward's Focus Arrangements Tracking System continued to have serious deficiencies as a result of the failure to migrate data maintained in the MediTract system to C360.

b. The delay in adopting needed changes to Policy GA-004-441 during the Third Reporting Period resulted in a variance from Policy GA-004-441 and therefore, a deficiency under Policy No. GA-004-236 IV.A.1.

c. The failure to adopt a policy to formalize the Standard Operating Procedure for Tracking Remuneration of all Entities during the Third Reporting Period is a deficiency under Policy No. GA-004-236 IV.A.1.

d. Broward Health's failure to adopt or update Compliance Policies and Procedures for practices and processes implemented or proposed during the Third Reporting Period resulted in a deficiency under Policy No. GA-004-236 IV.A.1.

e. The failure to adopt a formal policy or comprehensive listing of internal controls for the tracking of remuneration relating to Focus Arrangements during the Third Reporting Period is a deficiency under Policy No. GA-004-236 IV.A.1.

6. Deficiencies in the Implementation of Responses for Suspected Violations of Anti-Kickback Law and Stark Law

a. The Compliance Department failed to timely review the management exceptions contained in the Monthly Compliance and Ethics Report and to open disclosure activities in the Disclosure Log to be assessed and/or investigated. These are serious and ongoing deficiencies in Broward's compliance with the requirements contemplated by Section III. G. of the CIA.

b. The IRO is concerned about the aging of disclosures, which remain open on the Disclosure Log in Comply Track, and the time it takes Broward Health to assess, investigate, resolve and close disclosure activities. The IRO finds them to be deficiencies in Broward Health's compliance with the requirements of Sections III. D and G of the CIA.

c. The failure by Broward Health to timely review, assess, investigate and resolve and close disclosure activities evidences deficiencies in the implementation and operation of Broward's Disclosure Program required by Section III. G. of the CIA and raises serious questions as to whether Broward Health has in place systems, policies, processes and procedures for implementing effective responses when suspected violations of the Anti-Kickback Statute and Stark Law are discovered as required by and, in order to be in compliance with Section III. D.1.g. and Appx. B, A.8. of the CIA.

d. The IRO finds that Broward Health's failure to conduct a Risk Assessment during the Third Reporting Period results in a deficiency in its compliance with the requirements contemplated by Section III. F. of the CIA and raises serious questions as to whether Broward Health has in place systems, policies, processes and procedures for implementing effective responses when suspected violations of the Anti-Kickback Statute and Stark Law are discovered as required by and in order to be in compliance with Section III. D.1.g. and Appx. B, A.8. of the CIA.

e. The failure of the Board Compliance and Ethics Committee to meet during the last quarter of 2017 represents a deficiency in Broward Health's obligations under Section III. A. 2 of the CIA, which requires the Compliance Committee to meet at least quarterly and Sections III. A. 1. B and III.3.a. of the CIA.

f. Although Broward Health appears to have implemented an effective response to the potential Stark Violations described in this Report by making the SRDP Submissions and disclosing them as Reportable Events as required by CIA Section D.1.g., the IRO questions whether the time delay in discovering the potential violations represents a deficiency in the review and approval process or the operation of the process for determining and documenting the Fair Market Value of remuneration specified in Focus Arrangements required by CIA Section D.1.g.

g. Broward Health is required by CIA Section III. K. to conduct an appropriate review or investigation of allegations of matters that may involve a "Reportable Event" and if Broward Health determines, after a reasonable opportunity to conduct a review or investigation, that there is a Reportable Event, Broward Health is to notify the OIG in writing within 30 days after making the determination that the Reportable Event exists. The IRO leaves it to the OIG to determine whether Broward Health is meeting its obligations to investigate and report Reportable Events in a reasonably timely manner.

B. OBJECTIVE

In performing the Arrangements Systems Review during the Third Reporting Period of the CIA, we reviewed BH's systems, processes, policies and procedures relating to the initiation, review, approval and tracking of Arrangements as required by Section A of Appendix B of the CIA. We provide herein our findings and supporting rationale regarding weaknesses identified in BH's systems, processes, policies, and procedures relating to Arrangements described in Appendix B, Section A. 1-9 of the CIA. We also make recommendations to improve BH's systems, processes, policies, and procedures relating to Arrangements described in Appendix B, Section A. 1-9 of the CIA.

C. SCOPE OF REVIEW

Section A of Appendix B of the CIA defines the scope of the Arrangements Systems Review as:

A review of BH's systems, processes, policies, and procedures relating to the initiation, review, approval, and tracking of Arrangements.

Specifically, Section A. 1-9 of Appendix B of the CIA identifies the following nine enumerated categories for IRO review:

1. Centralized Tracking System¹³

"BH's systems, policies, processes, and procedures with respect to creating and maintaining a centralized tracking system for all existing and new and renewed Focus Arrangements (Focus Arrangements Tracking System), including a detailed description

¹³ For brevity purposes, hereinafter, we will refer to these 9 enumerated categories by the headings we have assigned to them in this description of our review.

of the information captured in the Focus Arrangements Tracking System" *CIA III.D.1.a. and Appx. B, A.1.*

2. Tracking Remuneration

"BH's systems, policies, processes and procedures for tracking remuneration to and from all parties to Focus Arrangements" *CIA III.D.1.b. and Appx. B, A.2.*

3. Tracking Service and Activity Logs

"BH's systems, policies, processes and procedures for tracking service and activity logs to ensure that parties to the Focus Arrangement are performing the services required under the applicable Focus Arrangement(s) (if applicable)" *CIA III.D.1.c. and Appx. B, A.3.*

4. Monitoring Leased Space and Patient Care Items

"BH's systems, policies, processes and procedures for monitoring the use of leased space, medical supplies, medical devices, equipment, or other patient care items to ensure that such use is consistent with the terms of the applicable Focus Arrangement(s) (if applicable)." *CIA III.D.1.d. and Appx. B, A.4.*

5. Process for Initiating Arrangements

"BH's systems, policies, processes and procedures for initiating Arrangements, including those policies that identify the individuals with authority to initiate an Arrangement and that specify the business need or business rationale required to initiate an Arrangement." *CIA III. D. 1.e. and Appx. B, A.5.*

6. Internal Review and Approval of Arrangements

"BH's systems, policies, processes and procedures for the internal review and approval of all Arrangements, including those policies that identify the individuals required to approve each type or category of Arrangement entered into by BH, the internal controls designed to ensure that all required approvals are obtained, and the processes for ensuring that all Focus Arrangements are subject to a legal review by counsel with expertise in the Anti-Kickback Statute and Stark Law" *CIA III.D.1.e. and Appx. B, A.6.*

7. Compliance Officer's Annual Review and Reporting

"The Compliance Officer's annual review of and reporting to the Compliance Committee on the Focus Arrangements Tracking System, BH's internal review and approval process, and other Arrangements systems, process, policies, and procedures." *CIA III.D.1.f. and Appx. B, A.7.*

8. Implementation of Responses for Suspected Violations of AKS and Stark

"BH's systems, policies, processes and procedures for implementing effective responses when suspected violations of the Anti-Kickback Statute and Stark Law are discovered, including disclosing Reportable Events and quantifying and repaying Overpayments when appropriate" *CIA III.D.1.g. and Appx. B, A.8.*

9. Ensuring Compliance with New Focus Arrangements Requirements

"BH's systems, policies, processes and procedures for ensuring that all new and renewed Focus Arrangements comply with the Focus Arrangements Requirements set forth in Section III.D.2 of the CIA" *CIA III.D.2. and Appx. B, A.9.*

D. DOCUMENTATION REVIEWED AND PERSONNEL INTERVIEWED

In the IRO's Arrangements Systems Review for the Third Reporting Period, the IRO reviewed the deficiencies identified in the Arrangement Systems Review Report for the Second Reporting Period. Broward Health did not complete a Response to the IRO's Arrangement Systems Review Report for the Second Reporting Period until August 17, 2018, which the IRO received on August 20, 2018. During the Third Reporting Period the IRO conducted interviews of the Broward Health Senior Management team and Certifying and Sub-certifying employees to determine what corrective actions Broward Health proposed to take or did take to address the deficiencies noted in the IRO's Arrangement Systems Review Report and to confirm if corrective action was taken as described in Broward Health's Response to the Arrangement Systems Review for the Second Reporting Period.

The IRO prepared for and conducted more than 100 interviews before Broward Health released its Response to the IRO's Arrangement Systems Review Report for the Second Reporting Period. Moreover, during these interviews and in its review of Internal Audit reports, the IRO learned of Broward Health's implementation of PO25 and of the "Road to Contracts" process. With regard to Focus Arrangements, PO25 and the "Road to Contracts" were substantive and material changes to Broward Health's contracting procedures and the tracking of costs. Broward Health's late response and its failure to provide the IRO with timely notice of the substantive and material changes in its payments to non-employee physicians (PO25) and its implementation of the Road to Contracts required the IRO to conduct significantly more work on this systems review.

The IRO reviewed BH's Annual Report for the Second Reporting Period, which also addressed some of the corrective actions proposed for the deficiencies. BH furnished the IRO with a copy of an August 10, 2018 letter from OCIG Senior Counsel Laura Ellis, which contained comments, questions and requests relating to her review of the Second Annual Report. Broward Health was to submit to the OIG a Supplement to the Second Annual Report on or before September 10, 2018, after the end of the Third Reporting Period. Many of the issues identified in the OIG's letter were identified, investigated, assessed and tested by the IRO in conducting its review during the Third Reporting Period and are addressed in this report.

The IRO independently tested whether the deficiencies were corrected or if they continued during the Third Reporting Period. Although work has been done by BH Senior Management and staff to address previously IRO-identified deficiencies, others were not corrected during the Third Reporting Period.

In the course of the Third Reporting Period Arrangements Systems Review, we reviewed the following documents:

- (1) the Corporate Integrity Agreement
- (2) the Code of Conduct, dated October of 2015
- (3) the Compliance and Ethics Corporate Integrity Agreement Policy and Procedures, which were revised and adopted in November of 2015
- (4) the minutes and, where relevant, audio recordings of meetings of the Board of Commissioners and Committees
- (5) listings of internal controls
- (6) payment work flows and narratives describing the internal controls imbedded in those payment systems
- (7) Internal Audit reports
- (8) Internal Audit programs
- (9) Internal Audit plans
- (10) compliance audit reports and backup
- (11) work plans, reports and reviews by Corporate Compliance
- (12) load factor analyses
- (13) various contracts and contract files in C360
- (14) documentation relating to the C360 data cleanup project
- (15) listings of Focus Arrangements
- (16) listings of leases
- (17) listings of contract revisions
- (18) listings of physicians' agreements nearing expiration
- (19) listings of contract holdovers

- (20) listings of Conflict of Interest forms and Financial Disclosures submitted to Broward Health by employee and non-employee physicians
- (21) the Ethics Manager's spreadsheets documenting review of Conflict of Interest and Financial Disclosures
- (22) diagrams, narratives and analyses of contract work flows
- (23) PowerPoints of departmental presentations and training
- (24) revisions to policy occurring during the Third Reporting Period
- (25) Broward Health's responses to the IRO's reports
- (26) standard operating procedures
- (27) listings of Certifying and Sub-Certifying Employees
- (28) disclosure logs and
- (29) management certifications completed by Certifying and Sub-Certifying Employees.

We conducted over 100 interviews of hospital Senior Management, Certifying and Non-Certifying Employees, other BH personnel and others with detailed information necessary for the Arrangements Systems Review and related work for the Third Reporting Period.

During the current systems review, the IRO assessed and tested whether C360 was functioning as a centralized data base for all Focus Arrangements. The IRO finds that all Focus Arrangements were not housed in C360 at the end of the Third Reporting Period. Moreover, there is universal agreement among various departments that the contract files in C360 are incomplete. The only question is the breadth of the problem.

The IRO interviewed the Manager of Supply Chain Systems, who explained that during the transition, Broward Health used MediTract to conduct an automated download of all executed contracts housed in MediTract's Contract Library. The executed or completed contracts were uploaded to C360, as were some contracts that were "in process" of completion and execution which had been maintained in MediTract's Process Manager Library. The Manager told the IRO that he took a list of contracts from MediTract and compared it to the contracts in C360 and determined that all contracts were present in C360 except for four of them.

The Director of Contract Administration confirmed that Focus Arrangements were in C360 with the possible exception of 93 "in process" contracts, which had been housed in MediTract's Process Manager Module. In a later interview in September 2018, the Director informed the IRO that her staff had confirmed that all of the "in process contracts" from MediTract, which had been finally executed, were found in C360. The Director provided the IRO with a spreadsheet listing 96 arrangements, 27 of which had a contract number.¹⁴ However, the IRO found that five of these contracts, listed as having contract numbers in C360, were not in C360 (1013277; 1011324; 1015230; 1015449; and 2002321) while there is a contract file in C360 for each of them. One of the contract files completely lacked documentation (2002321). With these five contracts are now expired, it cannot be verified that the executed contract was ever contained in C360.

Throughout the systems review, some interviewees consistently reported to the IRO that the contracts they search for were found in C360, but their representations were not supported by internal audits or the IRO's findings. As an example, the Director of Financial Operations stated that he uses C360 to pull up contracts for individual doctors and physician groups, system wide. The Associate Vice President of Business Operations for Physicians Services told the IRO that all contracts in Physician Services, including all physician contracts and service contracts, are in C360 and that C360 generates reports used by Physician Services to monitor and manage these contracts.

A component of at least three internal audits conducted during the Third Reporting Period were undertaken to determine whether certain Focus Arrangements could be found in C360. These Internal Audit findings were inconsistent, to some degree, with assessments of C360 by members of management. Internal Audit determined, that, in some cases, the Focus Arrangement could not be found in C360. The IRO summarizes Internal Audit's findings and the IRO's testing of those findings below.

¹⁴In addition to 27 arrangements on this list which have C360 numbers, there are two arrangements with contract numbers and marked "Incomplete in MediTract. New workflow in C360." The IRO found both of these executed contracts in C360. Another Arrangement on the list had a contract number, but was marked as "Rejected in C360." The IRO looked for the contract file in C360 and could not find a corresponding contract or contract file.

2. Internal Audit Findings Relating to Centralized Tracking System

Non-Employed Physician & Vendor Payments Review (June 29, 2018 draft)¹⁵

Internal Audit "haphazardly"¹⁶ selected 20 non-employee physicians and vendors and tested whether the contracts were housed in C360. Internal Audit found that four of ten non-employee physician contracts in the sample were not in C360. Two of ten vendor contracts in the sample (Emcare and Infectious Disease Consultants) were not in C360. The six contracts that were missing in C360 were all found by BH's Internal Auditor in MediTract and were active contracts.

Employed Physician Payment Review (July 2018)

An objective of the audit was to determine whether physician contracts, in place from July 2016 through May 2018, were maintained in Broward Health's centralized tracking system. Internal Audit haphazardly selected a sample of 40 employed physicians. Internal Audit found that two of the 40 contracts were not uploaded to C360. The two contracts were, however, found in MediTract.¹⁷

Payment & Transaction Testing: Employed Physicians¹⁸

Internal Audit examined 16 physician contracts and confirmed that each of the contracts was "maintained in NBHD's centralized tracking system in a manner that allows for the identification of the parties to the contract and the relevant terms of the contract and supporting documentation." The IRO was able to locate 13 of the 16 contracts in C360.

Deficiency: Broward Health's centralized contracts database for Focus Arrangements has incomplete contract files lacking essential supporting documentation and work flow histories. The failure to maintain essential supporting documentation and work flow histories in C360 results in noncompliance with § III.D.1.a. and Appendix B §A.1. of the Corporate Integrity Agreement and Policy GA-004-441 IV.B.8 and VII.

The IRO finds that Broward Health's Focus Arrangement contract files are incomplete due to: (1) a failure to fully follow procedures for contract initiation, review and approval; (2) data and information being lost from the transition from MediTract to C360; (3) data and

¹⁵The scope of this review covered transactions from June 1, 2017 through May 31, 2018.

¹⁶The IRO interviewed the Chief Internal Auditor regarding the meaning of the term "haphazardly," which is used by Internal Audit in several of its reports. The term means that Internal Audit did not randomly select its sample, but subjectively weighted the categories of Financial Arrangements included in its sample to reflect Internal Audit's understanding of certain risk areas deserving of more attention. The term, as "defined," is used in this Report.

¹⁷Management has not yet responded to the draft audit report.

¹⁸The scope of the review was from July 1, 2016 through May 31, 2017.

information being lost or altered when Broward Health converted to a new contract work flow system on January 8, 2018; and/or (4) a combination of (1) through (3).

In February 2018, the Chief Internal Auditor issued a report finding deficiencies in the contract files maintained in C360.¹⁹ An objective of the audit was to verify that active contracts and supporting documents were accurately transferred into the C360 system. The Chief Internal Auditor examined 30 contract files and found that only 21 contained a complete workflow history and only nine contained the comment history.

Another Internal Audit report, published in July 2018, likewise called into question the completeness of the C360 contract files. Internal Audit's report entitled, *Employed Physician Payment Review (July 2018)*, included the examination of 40 contract files for certain documentation that should be included in the contract files: conflict of interest, financial and ownership disclosure, system for award management database search, OIG database search, and Fair Market Value report. Internal Audit found that 18 of the 40 contract files were missing at least one of these documents in the C360 or MediTract systems. Management did not respond to the draft audit report.

The Manager of Remuneration Tracking, corroborated the findings of Internal Audit. He informed the IRO that his audits have found deficiencies in the information contained in C360 and that information he has found missing in C360 was found to be in MediTract.

Broward Health's Response to the IRO Arrangements Systems Review Report for the Second Reporting Period was received by the IRO on August 20, 2018.²⁰ In that Response, Broward Health acknowledged C360's lack of capability to upload certain information, such as contracting checklists from MediTract.

Deficiency: Contract Administration has not ensured that all required documentation, including contract workflow and supporting documentation, is maintained in the Focus Arrangements contract files, as required by Policy GA-004-441 IV.B.8.

As noted by the February 2018 Internal Audit Report, Policy GA-004-441 requires Contract Administration to ensure all required documentation, including contract workflow and supporting documentation is maintained in the contract file. Management responded to the February audit report, announcing that four pool employees were being hired by Contract Administration to review and update data that had migrated from MediTract into C360 "to ensure all data in C360 is complete, accurate and verified." *Broward Health's Supplement to Second Annual Report* (Sept. 17, 2018) more fully describes Broward Health's "clean-up project" to review the accuracy and completeness of the data migration from MediTract to C360 from May through August of 2018.

¹⁹ *The Contract Process* (February 6, 2018).

²⁰ *Broward Health's Response to the IRO Arrangements Systems Review Report for the Second Reporting Period* is also referred to in this Report as "Broward Health's Response to Second Systems Review."

The IRO interviewed the Director of Contract Administration in June 2018 during the ongoing clean-up project. The project encompassed a review of contract files for all 2,658 Focus Arrangements. Contract Administration created a spreadsheet for the recordation of comments on deficiencies found throughout the review. As stated in the *Supplement to Second Annual Report*, the First Phase of the project was to review these components of the 2,658 contract files, including: "agreement title; agreement category, effective start and end date, whether the agreement contains an auto-renewal provision; workflow status; the requesting NBHD region; daily/per unit compensation; annual and maximum compensation and Business Partner ID and EINs."

Spot checks of the First Phase work "have revealed a number of errors in data fields, such as inaccurate effective start dates and end dates, as well as missing data points, such as per unit compensation. Moreover, subsequent spot checks have found that a number of contracts and supporting documentation, such as Fair Market Value reports, have not been migrated to Compliance 360." *Supplement to Second Annual Report* p. 3. Follow-up corrective work on the contract files was just beginning at the time that the IRO issued this Report.

The IRO, in reviewing contract files, found that, in some cases, the status of the contract in C360 is inconsistent with the backup documentation in the contract file. For example, with regard to one physician contract (1012839) in C360, the Medical Directorship agreement is shown as having expired on November 17, 2017. Workflow in C360, however, showed it expired July 1, 2018. Broward Health provided the IRO with a spreadsheet listing contracts expiring within 90 days and on that spreadsheet, the expiration date is listed as June 30, 2018. On the face of the contract, however, the contract period was from August 15, 2016 to August 15, 2018.

3. Corporate Compliance Annual Review Report by the Senior Focus Arrangement Specialist

During the clean-up project, the Director of Focus Arrangements and Audit assigned the Senior Focus Arrangements Specialist, to conduct an audit of C360's contract files. The audit report was issued in July 2018. The audit was conducted for the purpose of satisfying Broward Health Policy GA-004-441 Section V.B.2., which requires Compliance to conduct an annual review of the contract database.

The audit sample was pulled from contracts executed between August 31, 2017 and June 1, 2018. Thirty contracts were randomly selected, consisting of ten contracts with individual physicians, ten contracts with physician groups and ten contracts of another type such as non-physician services, managed care or clinical trials. The auditor examined the selected contracts and related documents for the purpose of evaluating whether Broward Health's internal review, approval, and other Focus Arrangement procedures had been followed and were documented as required by GA-004-441 Section IV.

The *Corporate Compliance Annual Review Report: Focus Arrangement Audit* divides its findings between contracts executed during the "old work flow" or pre-January 8, 2018 and contracts executed during the "new work flow" after that date. The Director explained to the IRO that Broward Health's conversion to the new work flow caused certain components of the old work flow contract files to be lost or altered. The "new work flow" is more fully described elsewhere in Section III, E of this report and has been referred to by Broward Health as "The Road to Contracts," or an effort to more efficiently process its Focus Arrangements from inception to final execution.

With regard to the "old work flow" contract files, the Compliance auditor told the IRO that some of the contracts were in process when Broward Health transitioned from MediTract to C360 and that some of the contract file information in MediTract did not transition to C360. For example, the process manager work flow history did not transfer from MediTract to C360.

The audit examined 17 contracts that had been processed under the "old workflow" for contracts executed prior to January 8, 2016 and 13 contracts processed under the "new workflow" executed after that date. The Senior Focus Arrangements Specialist conducting the audit determined that contract files (1) lacked documentation of necessary approvals in the contracting process, (2) that in some cases all due diligence was not completed or documented, (3) documentation of an Ethics review was not found in some contract files, and (4) Focus Arrangement documentation, Fair Market Value reports and/or Commercial Reasonableness reports were not found in some contract files. The audit findings are set out in more detail as follows:

(1) Contract Initiator Review and Approval: For nine of the contracts, the auditor found no supporting documentation indicating contract initiator or CEO approval. The finding primarily regarded old work flow contracts for which process information was not transferred from MediTract to C360.

(2) Conflicts of Interest: For five of the contracts, Conflict of Interest forms were not found in C360. The auditor also determined that, as for these five contracts, an Ethics review had not been completed. The Director and Compliance auditor attributed this to the fact that these were contracts which had gone through auto-renewal and systemically, Broward Health has not been running auto-renewals through the Conflict of Interest/Financial Disclosure review process.

(3) Disclosure Form for Physician Ownership & Financial Arrangements: For five of the contracts reviewed, the form was not found in C360 and the auditor concluded that the Ethics review had not been completed. Again, it is related to the systemic deficiency in Broward Health's review of auto-renewals.

III. ARRANGEMENTS SYSTEMS REVIEW

A. CENTRALIZED TRACKING SYSTEM

"NBHD shall create procedures reasonably designed to ensure that each existing and new or renewed Focus Arrangement does not violate the Anti-Kickback Statute and/or Stark Law....These procedures shall include.....a. creating and maintaining a centralized tracking system for all existing and new or renewed Focus Arrangements (Focus Arrangements Tracking System) CIA III.D.1.a. and Appx. B, A.1.

1. Transition from MediTract and Ariba to C360

During the Second Reporting Period, BH opted to discontinue its use of two contract databases, MediTract and Ariba, consolidating their contents into one system - Compliance 360 ("C360"). C360 provides BH with the opportunity to foster a more complete preservation of a contract's workflow history in the electronic contract file.

The transition to C360 necessitated a concentrated effort by a team of BH personnel, made up of persons with familiarity with BH's contracting process. Their task was to convert an electronic contracting system in MediTract, backed by some paper documents to an electronic contracting process in C360. For example, the primary, essential form used by BH to assess the need and initiate the process of entering into a new physician contract was the 52 page "Physician Contractual Arrangement Term Sheet" ("CAT form"). A core task in BH's conversion to C360 process was the termination of the use of the paper CAT form in favor of an imbedded paperless process in C360.

As BH entered into the Third Reporting Period, imperfections in the conversion from MediTract to C360 gradually became more apparent. In the IRO's October 27, 2017 *Report on the Second Reporting Period Arrangements Transactions Review*, the IRO determined that parts of the Focus Arrangement contract files had not been successfully transferred, in their entirety, from MediTract to C360. While the IRO found the contract files in MediTract sufficiently complete for the performance of the Second Arrangements Transactions Review, BH had a substantial amount of quality control work to do during the Third Reporting Period to ensure that all Focus Arrangement contract files had completely migrated from MediTract to C360. The findings by the IRO were subsequently corroborated by audits conducted by both BH Internal Audit and BH Compliance.

Deficiency: Broward Health has not ensured that it is maintaining a centralized tracking system for all existing and new or renewed Focus Arrangements as required by § III.D.1.a. and Appendix B §A.1. of the Corporate Integrity Agreement.

(4) Focus Arrangements Review: The auditor determined that a Focus Arrangements review was not conducted on two of the contracts reviewed. Each of these contracts had auto-renewal terms and did not go through auto-renewal workflow process.²¹

(5) Focus Arrangements/ Covered Person Language: Focus Arrangements and Covered Person language was not included in two of the contracts reviewed by the auditor. One of the agreements was executed prior to the signing of the CIA, but was not reviewed or amended to include mandatory CIA provisions. The other contract was a Medical Director agreement without Focus Arrangements language. The contract in C360 was missing the pages of the contract where the language could have been included.

(6) Was All Required Due Diligence Completed? The auditor determined that due diligence was not completed for six of the contracts reviewed. Two of the deficient files were auto-renewal contracts.

(7) Assessments or Questionnaires: Eight of the electronic contract files reviewed by the auditor in C360 were for contracts initiated and/or executed before the C360 transition was completed, so assessments would not have been completed for the contracts in C360. The auditor found no assessments, questionnaires or Physician Contractual Arrangement Term Sheets ("CAT forms") for the workflows of these contracts in the C360 contract file. The Director and Compliance auditor commented to the IRO that it is unknown whether these assessments or questionnaires were completed at all or were not transferred to C360.

(8) Ethics Review: The auditor found five contract files with deficiencies with regard to Ethics review or a lack of this documentation in the contract file. The auditor found no Conflict of Interest or Financial Disclosure forms in two contract files where the contract had been automatically renewed without following the full review and approval process. Two other files, regarding contracts initiated and/or executed prior to the full transition into C360, contained no evidence of Ethics review. The auditor determined that Conflict of Interest or Financial Disclosure forms were not obtained. Contract Administration exempted one of the contracts from Ethics review because the vendor was a publicly traded company. The IRO notes that, without Ethics' review of the Conflict of Interest or Financial Disclosure forms, Broward Health cannot adequately conduct a Focus Arrangements assessment.

(9) Focus Arrangements Requirements Met? (Certifications, Broward Health Code of Conduct and Stark Law and Anti-Kickback Statute Policies and Procedures): In five of the contract files, the auditor found deficiencies in documentation required for Focus Arrangements. Certifications required by all Covered Persons were not attached to two of the contracts for some of all of the business partners. Four of the examined contract files lacked evidence of the Broward Health Code of Conduct and policies related to Stark and Anti-Kickback Laws being provided to the entity.

²¹The Director of Focus Arrangements and Audit, with the participation by Legal, created a table of workflow steps entitled, *Compliance 360-Exceptions to Workflow Steps for Auto-renewals, Extensions, Amendments and Termination*. The table illustrates the proper work flow for auto-renewals.

(10) Fair Market Value and Commercial Reasonableness Report: The examining auditor found that the Fair Market Value and Commercial Reasonableness reports were not included in six of the contract files reviewed. No documentation of Fair Market Value and Commercial Reasonableness reports were found in the contract file for the contracts.

(11) General Counsel's Office Review and Approval: General Counsel's Office review and approval was not documented for six of the contracts reviewed.

(12) Corporate Compliance Department Review and Approval: BH's Corporate Compliance Department review and approval was not documented for six of the contracts reviewed.

(13) Board Review and Approval: One of the contracts in the sample required Board review and approval and the auditor found that it had occurred.

(14) Contract Administration Review: For six of the contracts reviewed in the audit, Contract Administration review was not documented.

(15) Executed: One of the agreements reviewed was not executed. With regard to another contract examined, the auditor could not determine if the contract was executed due to the fact that the contract attached to workflow did not match all of the other information in the workflow.²²

The IRO's Transactions Review found similar deficiencies in contract files such as instances where, to name a few: (1) the approval process was not tracked and preserved in the contract file; (2) required attachments were not located in employed physician contract files; and (3) Conflict of Interest and Financial Disclosure forms could not be located in the contract files. Many of the errors found in the *Corporate Compliance Annual Review Report: Focus Arrangement Audit*, were in cases where the contract had undergone auto-renewal and part or all of the contract review process had been bypassed. The more favorable grading of the condition of the contract files in the *Arrangements Transactions Review* is likely due in part to the fact that the IRO's sample did not include contracts which had been auto-renewed.

²² After the Third Reporting Period, in September 2018, Contract Administration, Ethics and Compliance signed off in agreement to implement a Follow-Up and Action Plan set out in the final report.

B. TRACKING REMUNERATION TO AND FROM PARTIES TO FOCUS ARRANGEMENTS

"NBHD shall create procedures reasonably designed to ensure that each existing and new or renewed Focus Arrangement does not violate the Anti-Kickback Statute and/or Stark Law....These procedures shall include....b. tracking remuneration to and from all parties to Focus Arrangements " CIA III.D.1.b. and Appx. B, A.2.

Shortly after the execution of the CIA, Broward Health's Senior Management team and legal counsel drafted a listing of internal controls entitled, *"Tracking Remuneration To and From Focus Arrangements"* ("the Tracking Document"). The document describes global internal controls for all payment types as well as internal controls for specific payment types. Each control denotes the party or parties responsible for carrying out the particular internal control as well as the party responsible for oversight. The internal controls evidence the intent of Broward Health to develop procedures to ensure compliance with requirements of CIA §III.D.1.b. and Appx. B, A.2. A core function of the IRO's systems reviews is to test whether these internal controls are functioning to track remuneration paid and received under Focus Arrangements.

Deficiency: Broward Health does not maintain formal policy or comprehensive listing of internal controls for the tracking of remuneration relating to Focus Arrangements recognized by all departments system wide. Therefore, Broward Health fails to comply with Corporate Integrity Agreement § III.D.1.b and Appx.B.A.2 by employing procedures to ensure tracking of remuneration to and from all parties to Focus Arrangements.

During the Second Reporting Period, Broward Health created workflows or flowcharts of its various payment systems. After these workflows or flowcharts were developed by Broward Health staff they were included in a document entitled, *"Focus Arrangements Tracking Payments: To-Be Business Process Models (December 2016)."* The document illustrates in flowchart format how payments by Accounts Payable, Payroll, Workers' Compensation, TCA and other miscellaneous payments to referral sources are to be tracked. The flowcharts identify the departments within Broward Health bearing responsibilities for tracking payments.

During the Second Reporting Period, the IRO verified with various signers of the document, including representatives of Accounts Payable, Payroll and TCA, that the flowcharts accurately depicted the tracking of payments at Broward Health. Broward Health representatives communicated to the IRO that a purpose for the development of the work flows was to facilitate Broward Health's efforts to interface its various payment systems with C360 allowing, for example, the ability to restrict payments which would exceed contract limits and to allow for enhanced reporting and monitoring capabilities. The status of Broward Health's efforts to interface these payment systems with each other and with C360 is discussed further below.

Broward Health modified the Tracking Document, changing certain internal controls and reassigning responsibilities for the listed controls. The document was also improved by cross-referencing internal controls to the various payment work flows illustrated and described in *Focus Arrangements Tracking Payments: To-Be Business Process Models (December 2016).*

During the Third Reporting Period, the IRO interviewed representatives of departments having primary responsibilities over the various internal controls listed in the Tracking Document. It is apparent to the IRO that the authoritativeness of the Tracking Document was disregarded during the Third Reporting Period. It may be due in part to Broward Health's recent adoption of the PO25 protocol, which governs certain payments by Accounts Payable to physicians. The PO25 system is described and illustrated in Broward Health's *Requisition to Pay Physicians & Hospital Based Subsidies* (Feb. 12, 2018). The document describes various internal controls for payments to physicians and, apparently displaces the Tracking Document with regard to payments to non-employee physicians and hospital based subsidies.

Based upon numerous interviews, the Tracking Document is no longer universally recognized by BH as the authoritative listing of internal controls over payments to and from referral sources. For example, the Vice President of Financial Operations was not familiar with it when he was interviewed by the IRO in June 2018. The Director of Focus Arrangements and Audit told the IRO that the Tracking Document was outdated and has been, in part, superseded by the *Requisition to Pay Physicians & Hospital Based Subsidies* (Feb. 12, 2018). The Manager of Accounts Payable had not seen the Tracking Document prior to being interviewed by the IRO. She also saw the *Requisition to Pay Physicians & Hospital Based Subsidies* (Feb. 12, 2018) as having superseded the Tracking Document. Regional CFOs were completely unfamiliar with the document, but were knowledgeable of the *Requisition to Pay Physicians & Hospital Based Subsidies* (Feb. 12, 2018). Internal Audit, assigned to oversee the execution of many of these internal controls, opined that the document was no longer authoritative.

Other interviewees, whose departments are assigned responsibilities under the amended Tracking Document, confirm that the document accurately reflects operational internal controls for the tracking of remuneration paid or received pursuant to Focus Arrangements. BH's CFO, affirmed that the list of internal controls was in effect. The Director of Remuneration Tracking told the IRO that he used the document as a reference to identify parties responsible for particular internal controls, but he did not presently perform any tasks to carry out any of the oversight functions assigned to his department by the document.

The IRO finds that BH's changes to internal controls for the tracking of remuneration to and from parties to Focus Arrangements, including the implementation of the PO25 system, resulted in material and substantive changes made during the Third Reporting Period to the Arrangements systems, processes, policies and procedures for tracking remuneration to and from parties to Focus Arrangements, while no policy or procedure has been formally adopted.

Deficiency: BH has not ensured that functioning internal controls are in place to protect all payment types from the risk of extra-contractual payments and, therefore, fails to comply with Corporate Integrity Agreement § III.D.1.b and Appx.B.A.2 by employing procedures to ensure tracking of remuneration to and from all parties to Focus Arrangements.

It is possible that, collectively, the two documents, the Tracking Document and the *Requisition to Pay Physicians & Hospital Based Subsidies* (Feb. 12, 2018), define a comprehensive system of internal controls over payments relating to Focus Arrangements. The deficiency is that no one during the Third Reporting Period ensured that all payment types were systematically controlled.

BH leadership began addressing the deficiency after the end of the Third Reporting Period. In September 2018, the Director of Financial Operations, began conducting weekly meetings with the Chief Compliance Officer, the Director of Focus Arrangements and Audit, the Manager of Tracking Remuneration and General Counsel to review the internal controls in the Tracking Document to determine whether they are still operative and considering how the document should be updated.

Deficiency: Some of the internal controls listed in the Tracking Document are not functioning to guard BH's payment systems and, therefore, BH fails to comply with Corporate Integrity Agreement § III.D.1.b and Appx.B.A.2 by employing procedures to ensure tracking of remuneration to and from all parties to Focus Arrangements.

1. Review of Tracking Document Internal Controls

The IRO examined the operability of the 76 internal controls assigned to each of BH's payment systems in the Tracking Document. The IRO's findings as to each of the internal controls is listed in **Exhibit G** to this Report. Below are conclusions of the IRO as to the functioning of internal controls listed in the Tracking Document, by payment type and particular findings supporting these conclusions.

Global Internal Controls for All Types of Payments

Controls found by the IRO to be functioning:

- In order to ensure that Focus Arrangements are administered consistently with the terms of the contract, responsible parties appear to fulfill the responsibility of comparing invoices to backup data, such as time sheets in ServiceNow, and compare to the terms of the contract.
- Hospital CFO's ensure that check requests are consistent with compensation provisions in physician contracts as to pay rate, compensation cap, contract term and other material terms of the contract.
- Contract Administration performs periodic checks to test as to whether contract files are complete.
- Accounts Payable and Payroll ensure that before a payment is made, the payee corresponds to the party with whom Broward Health has a contract.

- Accounts Payable uses C360 to verify that a contract is in place prior to making a payment or relies on the existence of a PO25. Payroll uses C360 to verify that a contract is in place before making payment.
- ServiceNow provides payors with a notification when a new contract is in place.

Controls found by the IRO to not be functioning:

- It is uncertain as to whether all Focus Arrangements are stored in the contract database.
- Many Focus Arrangement contract files maintained in the contract database are incomplete and lacking support documents such as time logs.
- If an employed physician has a Medical Directorship, the Medical Director pay is included on the bi-weekly regular paycheck, instead of on a separate check as required by the internal control.

Internal Controls for Physician Employment Payments

Controls found by the IRO to be functioning:

- Quarterly audits of physician coding are conducted by an outside auditing firm and physician RVUs are adjusted by Physician Services. A corrected claim is submitted to the payor.
- Physician Services performs wRVU reconciliations on a monthly basis to ensure they are consistent with the terms of the employment contract.
- Physician Services conducts compensation reconciliations on a quarterly basis.
- Physician Services is conducting a 100 percent review of all compliance measures, including coding, contained in the employment contract and is reporting for the quarter within 30 days of the end of the quarter.
- Physician Services reviews quarterly coding audits with the physicians on a rotating basis.
- Physician schedules are created on a weekly basis and reconciled by the Practice Managers against the actual time worked by the physician in advance of being sent to the VP of Physician Services to calculate the hourly number.
- Physician Services completes a monthly reconciliation for on-call services provided by BHPG physicians.
- Practice Managers ensure that rendering and billing providers are assigned appropriately.

- Practice Managers and/or Coordinators are responsible for the entry and accurate submission of charges.
- Continuing Medical Education (CME) expenses are approved in advance by Physician Services.
- CME expenses are verified with receipts and approved, tracked, and recorded by Physician Services based on the contractual terms.
- Payroll confirms that the hours approved in Kronos match the hours being paid out through Lawson.
- Accounts Payable requires, as a condition of payment, that check requests for CME be accompanied by a reconciliation of the payments to the contract.

Controls found by the IRO to not be functioning

- Physician Services does not update Human Resources on a weekly basis of any new or renewed physician employment contracts, including amendments.
- The Manager of Remuneration Tracking does not perform reconciliations of hourly rates with approved schedules for physicians who are paid on an hourly basis, rather than productivity basis.
- Physician Services does not conduct a one hundred percent review of all quality measures contained in the employment contract within 30 days of the end of the quarter based on contract terms.

Deficiency: A full review of all quality measures contained in physician contracts is not being conducted and reported for the quarter within 30 days of the end of the quarter in accordance with contract terms and in accordance with Internal Control No. 14 in the Tracking Document.

Internal Controls for Payments for Medical Directorships

Controls found by the IRO to be functioning:

- Hospital CEOs review or ensure that time logs are reviewed to ensure that they are completed in accordance with contract (e.g. duties contained in contract) and the amount to be paid is consistent with the contract terms.
- Hospital CEOs ensure that new contracts require time logs within ten days after the end of the month.
- Hospital CEOs ensure that time logs specify the exact hours that the services were performed.

- Hospital CEOs verify that the physician provided the services as described in the time log and signs the time log to provide attestation. The electronic signed time log is sent to the Compliance Department for review and approval prior to payment.

Controls found by the IRO to not be functioning:

- As of the end of the Third Reporting Period, the internal control of reconciling bi-weekly schedules for employed physicians and Medical Directorship time logs, to ensure no overlap in clinical and non-clinical duties, had not been assigned to a responsible party.

Internal Controls for Payments for Hospital-Based Agreements

- **Controls found by the IRO to be functioning:**
- The Hospital CFO ensures hospitalist fee invoices are for work consistent with the contract terms.

Controls found by the IRO to not be functioning:

- **Deficiency:** Reconciliation calculations are not conducted on a quarterly or annual basis to determine any set-off payments consistent with the terms of the contract in accordance with Internal Control 39 of the Tracking Document.

Internal Controls for Payments for Call Coverage

Controls found by the IRO to be functioning:

- Hospital CEOs ensure that the physician on-call schedule is established, reviewed, and approved one month in advance.
- Facilities that have the same doctors on their staff confirm that doctors are not on call on the same day at more than one facility, unless such an arrangement is consistent with current Fair Market Value and Commercial Reasonableness appraisal.
- Doctors are not scheduled on-call for two different specialties at the same time, unless such an arrangement is consistent with a current Fair Market Value and Commercial Reasonableness approval.
- Hospital CEOs ensure that individual physician names are on the on-call schedule (may not be the group name). The physician's cell phone is also to be included.
- Hospital CEOs verify that the physician provided the services as described in the attestation and signs the schedule to provide attestation. The signed schedule is sent to the payor prior to payment.

**Internal Controls over Payments for Inpatient Hospital Services
and Clinic Follow-up (PPUC)**

Controls found by the IRO to be functioning:

- Hospital CEO's affirm that call schedules have individual physician names and not the name of any group practice.
- Payments of PPUC call were transferred from TCA to Accounts Payable effective November 1, 2017. The Administrative Director of TCA confirms that, from September 1 through October 31, 2017, TCA required a signed attestation and schedule as a condition of payment of PPUC call coverage.
- TCA verifies that services can be coded for under Medicare or Medicaid and would be eligible for coverage under Medicare or Medicaid.
- On a sample basis, medical necessity review of PPUC services is conducted.
- TCA recovers payments for services to PPUC patients, who are determined to be eligible for Medicaid or other insurance.
- Payment by TCA requires attestation by the physician, by a signed call schedule, and/or a signed CMS1500/HCFA form.

Controls found by the IRO to not be functioning:

- The Tracking Document has not been updated by Broward Health since the November 2017 transition of PPUC call payments from TCA to Accounts Payable. The Tracking Document does not assign internal control responsibilities to Accounts Payable for these payments. Accounts Payable management does not regard the Tracking Document as authoritative. Internal control responsibilities are imbedded in PO25 and are assigned to and carried out by Accounts Payable. However, Broward Health has not ensured that the displacement of the Tracking Document by PO25 has been accomplished with a comprehensive substitution of internal controls in PO25.

Internal Controls over Payments for Physician Recruitment

• **Controls found by the IRO not to be functioning:**

- The responsibility for all internal controls over payments for physician recruitment has not been assigned to a responsible party. The Tracking Document shows the Vice President of Physician Services as the responsible party, but the assignment of these internal controls is being re-evaluated by Compliance.

Internal Controls over Payments for Asset and/or Equipment Purchasing**Controls found by the IRO to not be functioning:**

- The responsibility for all internal controls over payments for asset and equipment leasing has not been assigned to a responsible party. The Tracking Document shows the Vice President of Physician Services as the responsible party, but the assignment of these internal controls is being re-evaluated by Compliance.

Internal Controls over Payments for Office Space and/or Timeshare Leases**Controls found by the IRO to be functioning:**

- The Real Estate Manager participates in space walk-throughs to ensure that spaces used by a Focus Arrangement party are consistent with the terms of the contract, including space used and frequency of use, and confirms that any additional space, support services, equipment, and the like are not being provided.
- The Real Estate Manager ensures that payments for space are consistent with the terms of the contract and with the Physician and Non-Physician Financial Arrangement Review, Approval, Tracking and Monitoring Policy prior to payment.

Internal Controls over Payments for Research**Controls found by the IRO to be functioning:**

- Physicians must record their time for research and must document hours of work on clinical trials. The office of Corporate Research checks the time logs.
- The Director for Corporate Research ensures that direct and indirect costs are contained in the study budget.
- The Director for Corporate Research ensures that time logs are reviewed and approved for all PIs and reconciled with contract prior to payment.
- For employed physicians, who are involved with research, the Research Manager reconciles time logs with approved weekly schedules to ensure that research and clinical time do not overlap.
- The Research Manager ensures that payments are made in accordance with the study budget.

Internal Controls over Non-Monetary Compensation**Controls found by the IRO to not be functioning:**

- As of the date of this report, BH Compliance was in the process of reviewing the controls with various departments in order to determine the correct responsible and oversight parties to be assigned to controls over non-monetary compensation.

Internal Controls over Professional Courtesies

The hospital CEOs advised that the hospitals do not provide professional courtesies.

Internal Controls over Non-Physician Referral Source or Physician Involved with Supplies, Devices, Equipment, and Patient Care Items**Controls found by the IRO to be functioning:**

- When a product arrives at Broward Health with an invoice, the invoice is matched to the purchase order. The receiver goes line by line on amount and quantity. The receiving ticket is maintained in Lawson. The matching purchase order and receiving ticket are maintained in Lawson.
- The three-way match process is used, which includes matching the invoice with the order and delivery prior to payment, for hospitals by centralizing the procurement process within corporate procurement.

Controls found by the IRO to not be functioning:

- Regional Managers of Materials were not introduced to C360 during the Third Reporting Period and were not able to access C360 to verify pricing in the contract.

Deficiency: Regional Managers of Materials did not have access to C360 to verify that pricing is consistent with the terms of the contract, as required by Internal Control No. 72 of the Tracking Document.

Internal Controls over Payments for Additional Leased Space, Supplies, Devices, Equipment, or Patient Care Items

The hospital CFOs confirmed that their facilities do not have leasing relationships that would be covered by these internal controls.

2. BH's Implementation of PO25 During the Third Reporting Period

During the Third Reporting Period, in about February 2018, the PO25 system was implemented by the Finance Department to govern payments for on-call physicians, non-employee Medical Directorships and hospital-based subsidy services. BH's CFO described PO25 as a systems improvement, which matches the purchase order to the contract. It is the

IRO's understanding that BH's implementation of PO25 was due to management's concern that more controls were needed over payments made to non-employee physicians.

BH's CFO told the IRO that generally, post PO25, the workflows in *"Focus Arrangements Tracking Payments: To-Be Business Process Models (December 2016)"* are unchanged as they related to internal controls of approval of payments. In particular, the Vice President of Financial Operations stated that the workflow for payments to employed physicians is unchanged by PO25. Accounts Payable is now the payor to physicians performing PPUC call coverage services. Payments to employed Medical Directors is unchanged by PO25. For physicians who have PPUC fee for services contracts, the physician will continue to bill services to TCA. The cost of these services is allocated to the hospital. TCA retains claims administration and pays the physicians by claim.

The Vice President of Financial Operations told the IRO that a training PowerPoint on PO25 was sent to all hospitals. The IRO used this PowerPoint entitled, *Tracking Payments Training*, during interviews of Broward Health personnel, who hold various responsibilities for controlling payments made pursuant to PO25.

3. Broward Health's Existing PO20 System for the Purchase of Supplies

PO20 is a system that has been used by Procurement at Broward Health for years. PO25 is modeled after PO20, taking the procedures used for the purchase of supplies and applying them to the payments made by Accounts Payable to non-employee physicians. The sequence of PO20 is now the sequence used for Accounts Payable's payments to non-employee physicians under PO25: (1) contract execution; (2) requisition; (3) purchase order (PO20) generated by Procurement; and (4) payment request submitted to Accounts Payable.

The main distinction between PO20 and PO25 is that PO20 also requires a three-way match of invoice to purchase order to the document confirming the receipt of the purchased items, before payment is made. The three-way match is applicable to the purchase of goods, but not of services. PO25 matches (1) invoice or time record; to (2) verification by the departmental representative, who can verify that the invoiced or time record services were performed; to (3) a PO25 purchase order with sufficient "funds" for the payment in the fiscal year.

In the PO20 system, Procurement creates the purchase order with parameters (contract period-beginning and ending dates and contract dollar limit) that are in the signed agreement. The purchase order, with preset parameters, is received by Accounts Payable. Purchase orders are in Lawson. The Purchase Order must bear the vendor number (VRS) and the contract number from C360.

4. **PO25 Payment Process for Physicians and Hospital-Based Subsidies**

During the Third Reporting Period, there were occasions where individuals would sign and submit requisitions before the contract was executed. Some individuals, who signed requisitions, did not have approving authority. In order to address the system weakness, Broward Health adopted the PO25 payment process for the payment of non-employee physicians and hospital-based subsidies.

a. **PO25 procedures are being implemented at a time when some payments to non-employee physicians have been transitioned from TCA to Accounts Payable.** Broward Health made a decision to have Accounts Payable take on the responsibility of making certain payments to physicians, which had been made by TCA. Specifically, payments to non-employee Medical Directors are now made by Accounts Payable and not TCA.²³ In addition, Accounts Payable now makes payments to physicians for call coverage services. TCA will continue to handle payments to physicians under the physician payment uncompensated care program ("PPUC") for fee for service and will pay claims submitted by physicians for services covered by the Best Choice program. If a physician submits a claim on a 1500 claim form, it is paid by TCA.

Deficiency: Broward Health implemented PO25 in the Third Reporting Period without formalizing it into a written policy as required by with CIA § III.D.1.b., Appx. B § A.2. and Policy No. GA-004-236.

b. **BH should formalize PO25 into a written policy.** Departmental responsibilities for establishing a PO25 purchase order and for processing payments are illustrated in a Process Flow Chart. The process is not, however, formalized in a written policy.

When interviewed on June 13, 2018, Senior Accounts Payable personnel described the PO25 process to the IRO. When interviewed again on August 15, 2018, Accounts Payable representatives advised they had a draft manual describing Accounts Payable's new work flow. The manual was drafted by staff in Accounts Payable, Purchasing and Contract Administration and, by the end of the Third Reporting Period, had been submitted to the Vice President of Financial Operations for review. As mentioned earlier in this report, all internal controls regarding payments made under Focus Arrangements should be consolidated into a single authoritative document and should be submitted to the Legal and Compliance Departments for review and approval as a Compliance Policy.

c. **The Effect of PO25 on BH's Policy for the Review, Approval, Tracking and Monitoring of Focus Arrangements.** BH Policy GA-004-441 specifies the process to be followed for initiating Financial Arrangements with both physicians and non-physician referral sources and for the review and approval of these Financial Arrangements. "When creating or renewing a Referral Source financial arrangement, the...principles and process [of GA-004-441] must be followed." GA-004-441. PO25 dictates a payment process that is post-contractual and therefore, of itself, requires Broward Health to make no changes to GA-004-441.

²³TCA had been paying about 187 providers. All of these payments have been transitioned to Accounts Payable. This consolidates payments into Lawson which had been made by TCA's separate payments system, Trizzeto.

During the Third Reporting Period, BH made other changes to its contract initiation, review and approval process by implementing "The Road to Contracts." The Road to Contracts not operating within the requirements of GA-004-441 is discussed in Section III, E of this Report.

- 1) **Vendor Maintenance Form.** After the contract is executed, if the physician is a new contractor with BH, a Vendor Maintenance Form is completed by Contract Administration for the new provider.
- 2) **New Vendor Setup in Lawson.** Accounts Payable receives notice of the new vendor from Contract Administration or ServiceNow and creates a new vendor in Lawson. Accounts Payable reviews the physician's W9 form, tax ID and compares these to the contractor name on the contract. The new vendor number assigned by Accounts Payable is the vendor's "Lawson number." In order to create a Lawson number, Accounts Payable must answer "yes" or "no" as to whether the contract is a Focus Arrangement.
- 3) **Designation of Focus Arrangements in Lawson.** During the Third Reporting Period, the Director of Focus Arrangements and Audit and the Chief Compliance Officer identified all BH vendors and providers being paid by Accounts Payable at the time PO25 was established, pursuant to Focus Arrangements. The providers have been flagged in Lawson. Going forward, new Focus Arrangements will be manually flagged in Lawson by Accounts Payable when they create the Lawson number for the vendor or provider. The manual task is necessitated by the fact that there is no electronic link between the C360 contract database and the Lawson payment system. As stated in every prior IRO Systems Review report, the reliance on a manual task is a system weakness.
- 4) **Requisition.** After a Lawson number is assigned to the vendor or provider, the Regional Medical Staff Office may issue a requisition. According to BH's *Requisition to Pay Physicians & Hospital Based Subsidies* (Feb. 12, 2018) p.9, the completion of a paper requisition is necessary to open or edit a PO25 Header Agreement.²⁴
- 5) **PO25 Header.** According to the Manager of Accounts Payable, a payment will not be made by Accounts Payable on a Focus Arrangement unless a "PO25 header" is in place. Flow Diagram 2.1.1 of the *Requisition to Pay Physicians & Hospital Based Subsidies* (Feb. 12, 2018) p.7, shows that Contract Administration routes a contract cover sheet with a Lawson number to the Regional Medical Staff Office. According to multiple

²⁴According to the Manager of Accounts Payable, a requisition must be in place before a PO25 header can be created.

interviewees, at this time, the Manager for Contract Operations is the only person creating PO25 headers.

The Manager for Contract Operations explained her protocol for establishing a PO25 for a contracted vendor or provider to the IRO. She explained that when she receives the requisition, she verifies the vendor by entering the vendor name in Lawson. She ensures that the naming "convention" for the vendor is accurate. The Manager can log into C360 using the contract number found on the requisition. She verifies the name on the contract and creates a PO25. She stated that, in the future, it is anticipated that the responsibility for the creation of the PO25 will shift from the Manager of Contract Operations to the Vice President of Supply Chain Services.

The PO25 "header," currently created by the Manager of Contract Operations, consists of the name of the provider, the contract number, the vendor or Lawson number, the specialty, Region, effective and expiring dates of the contract. The header has separate lines - one line per year. The dollar amount for the line functions as a cap on the amount that may be paid to the vendor under the contract for the year. One PO25 is issued per contract. A PO25 may have multiple lines (one line per year) showing the maximum amount that may be paid to the vendor for the year.

At this time, for a call coverage contract, since the contract does not have a pay cap, the maximum dollar amount, which may be paid to the physician during the year under a PO25, is calculated by multiplying the physician's daily rate by 365. In the future, the maximum amount will be projected using historical data. BH has created a matrix on rates, showing rate by provider and specialty. The line amount or dollar limit acts as a cap on payments to the physician in Lawson. Lawson stops payments once the limit is reached.

- 6) **The Monthly Payment Request Form.** The Regional Medical Staff Office or a representative of Physician Services at the Region completes and submits a monthly payment request form. The request must be signed by the CEO and CFO of the Region. The form is submitted to Accounts Payable with supporting documentation. A representative of the Medical Staff Office confirmed to the IRO that Accounts Payable will not pay if the payment request and back up to the request are deficient.

The CFO of the Broward Health Medical Center told the IRO that when processing these payment requests, he requires that the contract be attached to the request, so that he can ensure a contract is in place and has not expired. The back-up for the payment, contained in ServiceNow, is provided to the CEO for review. For on-call check requests, the BH

Medical Center CEO stated that he ensures that the rate being paid is correct.

The Physician Payment Request Form requires the requestor (Regional Medical Staff Office) to include the beginning and ending dates of the contract term on the form. If the service date on the monthly payment request form is outside the terms of the agreement, the requester will receive an "expired" warning. Accounts Payable looks to see if the contract is expired. If the contract has expired, it is flagged and Accounts Payable will not pay because the payment request is "Out of Service Terms."

The Vice President of Financial Operations explained to the IRO that the payment request process in PO25 puts the burden on the individual who should have direct knowledge of whether the services have in fact been provided. Collectively, it means the Regional MSO, CFO, and CEO are required to take ownership of the payment. As he explained, the burden should be on these approvers, not on Accounts Payable. He told the IRO, "We are changing the culture to put the onus on the owner of the contractual payment."

With regard to payment requests for call coverage, the CFO of BH Imperial Point stated that she requires to see the call log and call schedule. She told the IRO that she logs into C360 and checks the call rate to ensure it coincides with the rate on call.

Deficiency: At the end of the Third Reporting Period, payments to some Focus Arrangement providers and vendors were made without having a PO25 in place.

d. All Focus Arrangement Providers and Vendors are not yet under a PO25. Accounts Payable management informed the IRO that BH is in the process of putting all vendors under PO25. The represented priority is to convert all Accounts Payable payments to physicians to the PO25 system. Until the process is complete, prior to making payments to physicians, the Accounts Payable Supervisor continues to search C360 prior to payment to ensure a contract is in place.

The Manager of Accounts Payable explained to the IRO that, once all Focus Arrangements are operating under PO25s, when a check request is received by Accounts Payable, if there is no PO25, Accounts Payable refuses payment and sends the check request back to requestor and Contract Administration.

e. The Monthly Payment Request Form for Concurrent Call. The IRO has reviewed Broward Health's payment system for concurrent call and finds it to be a system improvement. Broward Health uses a specific monthly payment request form for concurrent call. According to Broward Health's *Requisition to Pay Physicians & Hospital Based Subsidies* (Feb. 12, 2018) p.17-18, the Regional MSO office receives attestation of call coverage signed by

the physician. The Regional MSO office prints individual schedules from each facility and tallies the number of calls per specialty.

The Regional MSOs and Regional Contract Specialists are charged to review concurrent calls by validating schedules from all other facilities, noting when concurrent calls occur. The Regional MSOs and Regional Contract Specialists are then responsible for validating the number of concurrent calls using the "consolidated On-Call report." The *Requisition to Pay Physicians & Hospital Based Subsidies* document instructs the Regional MSOs and Contract Specialists that, "The consolidated on-call report should be used ONLY as a tool to validate your numbers. The source of truth are the Individual On-Call Schedules located on MyPlace Portal."

The Regional MSOs complete the concurrent call payment request form, which also must be signed by the Regional CFOs and CEOs. One Regional CFO told the IRO that when she receives a payment request for concurrent call, she looks at the call logs at the hospitals involved and checks the rate for current call before she approves payment. The Manager of Remuneration Tracking represented to the IRO that he reviews physician payments for concurrent call.

f. **The PO25 System Facilitates Improved Tracking of Payments to Physicians and Non-physician Referral Sources by Broward Health's Hospital Level Management.** The Vice President of Financial Operations explained to the IRO that PO25 implementation is coupled with the addition of detail to Broward Health's general ledger, facilitating regional management of costs incurred by payments to PO25 vendors and providers. Screen 4 of the *Tracking Payments Training* PowerPoint is headed, "TRACKING PAYMENTS AT THE REGIONS" and states, "G/L accounts and sub accounts created to be able to account respective cost for the On-Call coverage and hospital based subsidy services."

Each Regional CFO corroborated the Vice President of Financial Operations' prediction that the new general ledger accounts and subaccounts would facilitate better tracking of the costs at the Region. BH Imperial Point's CFO told the IRO that the new accounts assist Corporate, particularly when comparing on call from Region to Region. At the Regional level, she stated hospital financial management compares payments to the budget, reviewing and reconciling any variances. According to Imperial Point's CFO, Corporate management conducts detailed monthly operating reviews, which promote Regional accountability.

g. **The PHYS PO25 Payments Report and the Reconciliation of Payments to Physicians.** Lawson generates an end-of-month report called the PHYS PO25 Payments Report. Broward Health's Vice President of Financial Operations told the IRO that it is expected that management at the hospitals will look more closely at these costs now that they will be reflected on the hospital's profit and loss statement.

The IRO finds that Broward Health's distribution of the PHYS PO25 reports will foster improved tracking of payments under Focus Arrangements. The IRO interviewed Broward Health's Director of Process System Integration & Improvement. She informed the IRO that the Regional Medical Staff Offices, CFOs and Finance Directors review PHYS PO25 reports. She showed the IRO the automated distribution list for the report and the distribution includes, in addition to the MSO, the Director of Contract Administration, Accounts Payable, Internal Audit,

senior Contract Specialists at the regions, the Vice President of Financial Operations, the Manager of Supply Chain Systems, the CFO, the Vice President of Supply Chain Services/CPO, the Chief Compliance Officer, the Manager of Contract Administration and Vendor Relations, the Manager of Remuneration Tracking, and the COO. It is intended that the distribution of the report will facilitate the Regions' ability to manage these hospital costs.

The IRO finds that the report meets BH's goal of facilitating management's timely initiation of the contract renewal process. The Vice President of Financial Operations also stated that the report is distributed to all hospitals, so that the Regions can be proactive in setting up new requisitions. One Regional CFO told the IRO that she monitors the line items, compared to budget, to ensure that the right cost number and hospital is charged. The Chief Internal Auditor represented to the IRO at the end of the Third Reporting Period, that Internal Audit is beginning to use the report.

The Director of Medical Staff said that she and MSO Regional Managers receive the PHYS PO25 report on a monthly basis. She explained that the Regional MSO Managers should check the report to look for their contracts and ensure that contracts are not coming up for renewal and consider whether the amount of funds remaining on the PO25 is as expected.

5. Conditions under which Accounts Payable will not make a payment to a physician or a non-physician referral source

Accounts Payable personnel informed the IRO that there is a "hard stop" in the Lawson payment system, preventing payment in excess of a contract amount. According to BH's CFO, if Accounts Payable receives a payment request and finds that no contract is in place, it will stop payment until a contract is located or is in place. If there is no active contract in the system, Accounts Payable is not authorized to pay. Accounts Payable gave the IRO the example of BH's linen contract having expired. According to Accounts Payable, the situation resulted in the Vice President of Procurement engaging Contract Administration to correct the problem, if appropriate.

In Accounts Payable, there are Senior Processors, who handle payments. If there is a hard stop, the Senior Processor follows up to see if action can be taken (getting a contract in place), so a payment can be made. The Senior Processors try to resolve issues that cause the hard stop. These steps, including the email trail with the check requestor, are documented in Lawson, according to the Manager of Accounts Payable. Accounts Payable invites Contract Administration and Procurement to participate in a weekly call addressing hard stops. According to the Vice President of Supply Chain Services/CPO, Accounts Payable has stopped payment for various reasons and is raising good questions. Weekly calls are used to address questions that Accounts Payable has raised.

The IRO selected a sample of contracts which expired during the Third Reporting Period and tested whether any payment was made to the vendor for work performed after contract expiration. The testing found no payments by Broward Health for services performed after contract expiration.

Although Broward Health personnel have characterized the use of the PO25 as a “hard stop” resulting in the prevention of payments being made without a contract approved through C360, the improved process remains challenged by the inappropriate and possibly fraudulent risk of management overrides or the use of improper contract numbers to obtain payments without the associated contract receiving approval through C360. As was reported in *The IRO's Report on Consulting Arrangements* (July 23, 2018), Broward Health personnel sought to have payment made to AON Consulting Inc. for services outside the scope of a contract in C360. In addition, the IRO is aware that a Community Health Services physician rendered services outside the scope of his contract, the services were not approved through the C360 process and in order to get the physician paid, the then Vice President of Community Health Services authorized payment under the only contract in the C360 System. The problem cannot be understated. As reported in its *Supplemental Report* (July 10, 2017),²⁵ the IRO found management overrides, which resulted in the payment of \$2.1 million on a \$246,000 one year fixed fee contract by a now former Senior Vice President. Others have also been identified by the IRO. The multi-level approval process of PO25 reduces the risk of management override, even in the form of purposeful mischarging of payments to a contract, since success of the mischarging would require collusion, which is a weakness of any accounting system.

6. Internal Audits Testing Payments by Accounts Payable

During the Third Reporting Period, Internal Audit conducted two audits testing Accounts Payable's controls over payments. While these audits identify deficiencies in Accounts Payable's operations, the transactions, which were the subject of these audits occurred prior to the Third Reporting Period, preceded the initiation of PO25 and pre-date the current managerial staff at Accounts Payable.²⁶

7. "One-Time Purchase Orders"

Deficiency: "One-time purchase orders" were used to make multiple payments without a contract in place with the payee.

Deficiency: No Focus Arrangements review was conducted on one time purchase orders.

The then-CCO informed the IRO that at BH Coral Springs Hospital, about \$190,000 of work was performed by a vendor pursuant to multiple "one-time" purchase orders, with no contract in place. It is important to note that the Vice President of Supply Chain Services, opined to the IRO that there is still a risk of purchase orders being issued with no contract in place.

²⁵ This report was made part of the November 30, 2017 Arrangements Systems Review Report for the Second Reporting Period.

²⁶ *G4S Security Inc. Payments & Deliverables Review* (October 2017)(This audit reviewed payments to this vendor during calendar year 2016); *Surgical Equipment Maintenance* (January 17, 2018)(The scope of this audit was to review transactions from January 1, 2016 through June 30, 2017).

BH has taken action to address the deficiency in the context of "emergency" purchases, adopting a policy for emergency situations where no contract is in place with the preferred vendor of the item. Under the new policy, the requesting department issues a memo explaining why the requested purchase qualifies as an emergency. The hospital CEO signs the memo and it must be approved by someone in BH Senior Management. In addition, a one-time purchase order report will be delivered to Corporate Compliance on a monthly basis, listing all of these one-time purchase orders. Under the new procedure, the first log went to Compliance in August 2018.

The Vice President of Supply Chain Services explained to the IRO that all non-contracted vendors providing goods or services for emergencies must be registered in Broward Health's Vendor Registration System and must have submitted a timely Conflict of Interest form and Financial Ownership Disclosure form. If the forms need updating, the policy requires that they be updated within 48 hours. If the emergency purchase order is issued and the Conflict of Interest or Financial Disclosures form contains substantive potential conflicts, Procurement will notify Compliance.

On August 17, 2018, the then-CCO issued BH's Response to the IRO's *Arrangements Systems Review* for the Second Reporting Period. The Response included a Standard Operating Procedure entitled, "*Requisition Process for Equipment and Supplies.*" The SOP included procedures for both electronic and paper requisitions for "non-contracted" items. According to the Response, in the event of emergency/overnight order where the vendor is non-compliant, an exception is made and logged in the Purchasing Exception Book. The Exception Book is reviewed by the Purchasing Coordinator and Manager once a week. The Vice President of Supply Chain Services explained that the exception book is provided to Compliance. A one-time payment is allowed, according to the Response, but Accounts Payable will not allow a second purchase from the vendor or provider without a contract in place.

8. Manager of Tracking Remuneration

During the Third Reporting Period, the Manager of Tracking Remuneration operated without a work plan or protocol but instead, functioned on a self-directed basis. At this time, he performs tasks based on what he observes, based on his experience in revenue and compliance.

The Manager explained to the IRO that he uses the monthly PO25 report and compares actual payments to budget. He cross references some of the payments to the contract and looks up the contract in C360. If the contract is expiring soon, he sends an email to the Regional MSO and Contract Administration, calling their attention to the impending contract expiration or to the fact that spending is nearing the cap for the contract. He told the IRO that he receives questions from contract specialists at each facility and he follows up on them. The Manager advised the IRO that in Tableau he identifies large payments and looks at the list of payments. He said that he checks payments against the terms of the contract. He stated that he also compares payments of the Chiefs of Staff and Medical Directors to see if they are being paid the same for comparable work. During the Third Reporting Period, using Tableau, the Manager of Tracking Remuneration worked with Internal Audit, looking at payments to ten individuals and ten groups.

During the Third Reporting Period, the Chief Compliance Officer, the Director of Focus Arrangements and Audit and the Manager of Tracking Remuneration discussed the need for a protocol and procedures for the Manager of Tracking Remuneration. The Manager drafted and submitted to Compliance and Focus Arrangements a draft process/procedure. The draft policy listing the five main responsibilities for the Manager of Tracking Remuneration and eight primary monthly procedures to be carried out by the Manager is attached as **Exhibit H** to the IRO's report.

9. Tableau

Deficiency: While Tableau is used by Broward Health to assemble a comprehensive listing of all payments made by Broward Health to a provider or vendor from all Broward Health payment systems, Tableau is not accurately associating payments with contracts. During the Third Reporting Period, Tableau was only used on a pilot basis, even though it was being relied on as an internal control for which there were no substitute internal controls in place during the pilot period.

Finding from Second Systems Review: Broward Health is in the process of implementing a platform (Tableau) to connect all payment systems to improve the tracking of payments to a single payee receiving payments from multiple payment systems.

During the *Arrangements Systems Review* for the Third Reporting Period, BH's Director of Performance Process System Integration & Improvement and the Process Improvement Analyst performed a demonstration of the operations of Tableau for the IRO. The demonstration of Tableau showed that Tableau reflects payment history to payees and vendors back to 2015. Tableau can export data to excel spreadsheets allowing it to be sorted.

The IRO examined a report on Tableau called the "F/A Aggregate Payment Report." For the report, the federal income tax identification number is used to identify the provider or vendor in order to overcome the inconsistent naming of providers and vendors in the various payment systems and in C360. Tableau is populated by daily "feeds" to a "data warehouse." C360 and the various payment systems all direct data to the data warehouse. Tableau connects to and pulls data from the daily "feed." Tableau also pulls certain data from C360, including the annual maximum payment amount allowed by the contract and the aggregate contract cap. Tableau presents the data, so the user may compare total payments to the annual maximum amount.

It was demonstrated to the IRO that Tableau can search by provider or vendor name, by tax ID number and contract number. The Vice President of Financial Operations told the IRO that Tableau is used to, for example, view all payments by Accounts Payable by check number. He stated that Tableau can be used to identify any double payments to providers. He pointed out that Tableau is used to monitor payments under all Focus Arrangements, not only those with physicians.

During the Third Reporting Period, Tableau has been functional, but still in a development phase, with only ten individuals having access to use it. The users of Tableau during the period have included: BH's Director of Performance Process System Integration, the CFO, the CCO, the COO and the Vice President of Financial Operations. The IRO interviewed all of the users and confirmed that they have used Tableau during the Third Reporting Period. The Manager of Tracking Remuneration has used Tableau for multiple purposes during the Third Reporting Period, including examining payments to individual physicians to test whether any payees appear to be outliers deserving of follow-up examination. During the pilot period of Tableau's operation, Internal Audit has not had a license to use Tableau, but Internal Audit confirmed to the IRO that Internal Audit has observed the Manager of Remuneration Tracking's use of Tableau.

Near the end of the Third Reporting Period, the IRO was notified by Broward Health's General Counsel and the Director of Focus Arrangements and Audit that recent testing is showing that Tableau appears to be able to match payments to only about 200 of the more than 2,500 Focus Arrangements in C360. The Director of Focus Arrangements and Audit explained that Tableau erroneously attributes the same payments to multiple physician contracts. However, she explained, Tableau can accurately provide aggregate payments made to the provider and the detail of payments. She stated that Tableau cannot, however, reliably tie payments to the appropriate contract.

It is unknown, at this time, if the functionality of Tableau is being adversely affected by inaccurate or incomplete data in C360. Tableau also has inaccurately reported payments under the wrong payment system, incorrectly showing identical payments being made to the same provider in both the Accounts Payable and Payroll payment systems. The problems are, to the IRO's understanding, currently under review by Broward Health's management.

Even with Tableau's limitations, the Vice President of Financial Operations explained to the IRO that he finds Tableau to be a good system to determine the aggregate of payments being made to a vendor or provider, system wide, by looking at payments by tax ID number. He told the IRO that he can, in Tableau, see individual payments to the vendor or provider, and can see the payment type and, from that, deduce the contract type to which the payment relates (for example, Medical Director or hospital based subsidy). He pulls the information into a spreadsheet that he uses of financial management purposes.

Following the pilot period for Tableau, at the end of the Third Reporting Period, BH purchased additional licenses to broaden its use. For example, the Chief Internal Auditor verified that while Internal Audit did not have Tableau for the Third Reporting Period, it was being set up for use by Internal Audit in September 2018. His plans are to compare Tableau data to PHYS PO25 reports to see if PO25 shows the same amount as Tableau. Internal Audit also intends to test the accuracy of Tableau.

The flaws in Tableau's operability has been designated as a deficiency, in part, due to the fact that BH relies on Tableau in its internal controls over remuneration being paid under Focus Arrangements. The recent draft protocol for the Manager of Tracking Remuneration evidences the reliance. For sample payments made by Lawson-Accounts Payable, Lawson-Payroll, Trizzeto and HAS, the Manager is to compare payments shown in Tableau against the amount of compensation shown in the contract. This is a function, which currently cannot be reliably performed using Tableau.

10. Internal Audits Relating to the Tracking of Remuneration to and from Focus Arrangements

Internal Audit conducted several audits during the Third Reporting Period, which tested the tracking of remuneration to and from Focus Arrangements. These audits are summarized below. For the most part, the audits affirmed that payments to employee and non-employee physicians were being made in accordance with the terms of their contracts. One audit illustrated the importance of the operability of internal controls performed by Physician Services over payments for continuing medical education. Another audit affirmed that Physician Services is fulfilling its responsibility to perform reconciliations of physician pay.

Some audits, conducted and/or completed in the Third Reporting Period, examined transactions in prior years and demonstrated the need for improvements, which in most cases, have already been put in place by Broward Health. For example, one audit demonstrated the need for improved tracking of payments for call coverage, a need which may be met with Broward Health's new PO25 payment system. An audit of Medical Director time incurred during calendar year 2016 detected deviations from contract terms, which appears to have been addressed by BH's multi-level time entry review process in the Physician Time Sheet Approval System. Another audit displayed the importance of placing the responsibility on the party more able to verify whether the services reflected on the payment request have in fact been performed in accordance with the terms of the contract, instead of relying on Accounts Payable to make the determination.

- a. **Employed Physician Payment Review (July 2018).** An objective of the Internal Audit was to review Physician Services' reconciliations of payments to determine whether payments under the selected physicians' contracts were properly tracked. Internal Audit non-randomly selected 40 physician contracts for its examination and reviewed reconciliation statements from Physician Services and payroll information from Payroll.

Internal Audit found that three of the 40 contract reconciliations contained errors, but only one of those errors resulted in an overpayment to the physician. Internal Audit partially attributed the errors to the fact that the reconciliations were calculated manually.

b. **Non-Employed Physician & Vendor Payments Review (June 29, 2018 draft)**²⁷

The audit had two stated objectives: "(1) determine if BH's processes and policies complied with the requirements of the Independent Review Organization (IRO) recommendations, and (2) examine the accuracy of payments made to non-employed physicians."

For the 20 sample contracts, the Chief Internal Auditor examined whether remuneration paid had been properly tracked. The Chief Internal Auditor found problems with payments made to one of the physicians and one of the vendors. One physician had contracts with BH for hand surgery and plastic surgery. The Chief Internal Auditor discovered that TCA's payments to the physician for on-call services for hand surgery had been incorrectly categorized as payments for plastic surgery.

The Chief Internal Auditor also found that payments to a provider of anesthesiology services were inconsistent with the compensation method set out in the contract and that, consequently, BH overpaid the provider \$102,126.

c. **Payment & Transaction Testing: Employed Physicians**. Internal Audit performed a review of payments to employed physicians.²⁸ The audit procedures employed by Internal Audit included a reconciliation of payments to wRVUs performed.

Internal Audit noted there were no exceptions during the testing and concluded that BH's payments to all 16 employed physicians earned a passing grade for each of the following tests: "Is the remuneration/payment under the contract properly tracked, reasonable, consistent and timely?;" and "Is the contract set forth in writing and signed by NBHD and the other parties to the contract?"

d. **Regional Anesthesiology Contract Review (March 2018)**. BH has a contract with a regional provider of *anesthesiology* services, reaching the four BH hospitals. Under this multi-year contract, the contractor staffs 55 sites within the four hospitals. The contractor was to be paid over \$7.1 million for the first year of service, in monthly amounts of about \$595,000. The annual amount was subject to an yearly increase based on the Consumer Price Index.

Internal Audit performed a reconciliation of payments and discovered (1) an overpayment of \$46,019 due to an error in the CPI adjustment; (2) an extra-contractual amendment resulting in an unauthorized increase in payments of \$56,107; and (3) a failure to track and reconcile costs at three of the hospitals.

²⁷The scope of this review covered transactions from June 1, 2017 through May 31, 2018.

²⁸According to the workpaper, 20 payees were "haphazardly" selected for review, but the workpaper reflects the review of payments to 16 employed physicians.

The Vice President for Accounting Services responded to the audit report pointing out that BH has "recently adopted a new payment process that will review, and if necessary, reconcile payment invoices *before* they are submitted to the Accounts Payable Department for processing." According to the Vice President, "The responsibility of payments made to the contractor was delegated to the Accounts Payable Department starting on October 1, 2017. In the new payment process, BH facilities' CFOs are responsible for ensuring that the invoices are reviewed before submitting them to the Medical Staff office. The Medical Staff office then creates the check request for submittal to Accounts Payable for payment."

The IRO interviewed the Director of Medical Staff specifically regarding the contract. The Director is the Medical Staff Office approver for payments to the contractor, since it is a system wide contract. As represented in the response to the audit report, she verified that she assembles the backup that goes with the payment request to Accounts Payable. The IRO also discussed the audit report with the Chief Internal Auditor. He observed that the Vice President of Financial Operations has taken action to improve the monitoring of contracts. The Chief Internal Auditor explained that, when a physician submits an invoice and check request, the CFO for the hospital, not Accounts Payable, should look at the backup for the payment. It is a change of emphasis and responsibility resulting from the implementation of PO25.

The extra-contractual amendment occurred when a former BH CEO added five sites to the contract's coverage, thereby amending the contract by e-mail. The IRO questioned the Director of Medical Staff regarding PO25's limitations on annual total payments under the contract. According to the Director, a requisition is issued each year under the contract, to create a PO25, setting a dollar limit for payments on the contract for a particular year. It would appear to the IRO that if management attempted to add compensation under a contract, by email, the PO25 should bar payments in excess of the annual contract amount.

- e. **Physician Payment Review: (March 2018)**²⁹ The objective of the audit was to test whether payments to a physician were consistent with the terms of his contracts. For the period under review, the physician held a contract as a pool physician for Community Health Services ("CHS"). Under the contract, he was paid an hourly rate for pool coverage he provided at Broward Health facilities. The physician also had a contract to provide patient care to the community, but outside of the Broward Health facilities. According to the contract, the physician would bill Broward Health for the services he provided to patients at non-BH facilities through CHS.

²⁹This audit examined payments made to a physician from April 2016 to present. This report is in draft only.

The Chief Internal Auditor identified three problems with BH's payments to the physician that are particularly relevant to the IRO's Systems Review. First, the Chief Internal Auditor found that CHS approved payments of \$13,911 to the physician after his contract terminated were made from April 2016 until September 2017. Second, the Chief Internal Auditor determined that the physician, though not under contract, continued to be maintained as an "active" employee in the Lawson payment system during the 18-month period during which all of his contracts with BH had expired. Third, the Chief Internal Auditor found that BH paid the physician \$3,821 for travel and continuing medical education in March 2017, even though his contract with BH expired in April 2016. The IRO discussed the audit report with the Chief Internal Auditor, who pointed out that CHS is now under the management of Physician Services which, in his view, has better internal controls in place to prevent out of contract period payments.

Internal Audit published several other audits during the Third Reporting Period examining the tracking of remuneration paid to physicians. Some of the reports examined payments prior to the Third Reporting Period and will not be discussed here.³⁰ In one of those reports, management appears to reference PO25, then in the development stages, as a more effective way to avoid the overpayment of physicians for call coverage.³¹

In one of the audits completed during the Third Reporting Period,³² Internal Audit examined payments made to a physician in 2016 and determined that his Medical Director time sheets exceeded the maximum hours allowed per pay period under the contract. Management's response to the audit was that the approvals of time in excess of the pay period limit occurred "under prior leadership" and that, "[m]oving forward, we will monitor the hours submitted to ensure they are in compliance with the contract stipulations." During the current systems review, multiple interviewees have affirmed the operability of the multi-level time entry review process on which these payments are conditioned, making extra-contractual payments of this type less likely to occur.

³⁰ *Review of Physician Compensation* (October 2017) (The audit reviewed payments from September 30, 2015 through September 29, 2016) and *Review of Physician Compensation* (October 2017) (The audit reviewed payments from September 30, 2015 through September 29, 2016).

³¹ *Review of Physician Compensation: Dr. Ahmad Osman* (October 2017) The audit reviewed payments from July 1, 2016 through June 30, 2017 and found overpayment of call coverage due to TCA applying an old rate from an old contract. Management responded that, "BHMC will reconcile the on-call services with the terms of current Call Agreements. The new automated payment tool (in development at this time) will include a validation of the effective and termination dates to ensure payments are made within the confines of the agreement in effect." The "automated payment tool" is presumably PO25. Since the time of the audit and the transactions covered in the audit, these call payments are no longer being processed by TCA, but are now made by Accounts Payable. The PO25 payment system requires that the party requesting payment identify the effective dates of the contract on the payment request.

³² *Review of Physician Contract* (October 19, 2017).

11. Management's Responsiveness to Internal Audits

With regard to many of the internal controls listed in the *Tracking Remuneration To and From Focus Arrangements* document, Internal Audit is the oversight party. Internal Audit commented to the IRO that at the direction of the then Executive Vice President and Chief Operating Officer changes have been made to improve departmental responsiveness to internal audits. The then COO directed Internal Audit to report to the then COO if a department failed to respond to a draft Internal Audit. The approach has, according to Internal Audit, corrected the problem. The IRO observes that, with regard to Internal Audit reports reviewed by the IRO and as reflected in this Report, Senior Management appears to be responding more fully and regularly to draft Internal Audit reports.

12. Review of Issues Noted in the Systems Review for the Second Reporting Period

The IRO identified the following issues or deficiencies during the previous systems review and has updated its findings for the Third Reporting Period as shown below:

Finding from Second Systems Review: *Accounts Payable's failure to have a procedure in place to compensate for the absence of an automatic notice of contract termination remains a system weakness.*

Deficiency: **C360 does not provide an automatic notice of contract termination to Accounts Payable and this remains a system weakness.**

BH's Response to the IRO's Second Systems Review does not directly address its system weakness other than to state that Broward Health is working on a process for all items paid by Accounts Payable. Accounts Payable's management has informed the IRO that until all Focus Arrangements are under PO25 headers, Accounts Payable will manually review the term of a contract in C360 before making payment to ensure the dates of service are within the contract term. Once a contract with a provider or other referral source is covered by a PO25 header, the payment request requires the requester to identify the contract term and Accounts Payable reviews it before making payment.

The Manager of Accounts Payable described a manual procedure that is currently used. She explained that if a contract is terminated, the requesting department or Contract Administration sends an email to Accounts Payable of contract termination. If a lease terminates pre-term, Accounts Payable receives an email from the Director of Real Estate. However, Broward Health's reliance on this non-systematic practice remains a system weakness, particularly in the event a contract is terminated before the stated contract term expires.

Finding from Second Systems Review: *A hard cap field is available in C360. However, it is the position of Contract Administration that it lacks the authority to utilize the field and stop a payment by Accounts Payable from occurring.*

The IRO recognizes that the contracting and payment systems do not electronically interface, thereby preventing the contracting system from automatically preventing payment. Broward Health's Response to Second Systems Review states that C360 has an annual compensation field and a maximum compensation field, but they are not considered hard caps to stop payment. However, as pointed out by the Response, the annual compensation amount on the PO25 header serves as a hard stop against payment. The IRO asserts the purported hard stop is vulnerable to management override.

The IRO interviewed the Regional Manager of Compliance at the Medical Center. She pointed out that when employed Medical Directors reach their annual contractual maximum of payments, no more payments will be made because Payroll manually keeps up with the pay cap on a spreadsheet. The IRO has found that the Payroll Department follows the practice and has inspected this spreadsheet utilized by the Payroll Department. With regard to non-employee Medical Directors, she explained that the departmental level approver keeps up with compensation maximum for the non-employee physician, again, manually on a spreadsheet.

Finding from Second Systems Review: *The IRO strongly recommends that all of Broward Health's Payor Sources maintain records of payments made without contract(s) and approval(s) and report them to Compliance.*

Deficiency: **Broward Health does not systemically require payors to report to Compliance all payments made without a contract in place.**

BH's Response to the IRO's Second Systems Review provides that the BH Compliance Department has been "notified of multiple instances where Accounts Payable was requested to make a payment or Procurement was requested to create a purchase order." The IRO renews its recommendation that all BH payors be directed to report to Compliance all payments made without contracts.

Both the Manager and Supervisor of Accounts Payable affirmed that their department has received requests to make payments without contracts in place. However, they stated to the IRO that every vendor and every provider must have an agreement in place to receive payment. If a request is made of Accounts Payable, the requester is informed that no payment will be made without an agreement in place. An Accounts Payable representative stated that they receive phone calls from vendors requesting payment in situations where services have been performed, but no contract is in place, Accounts Payable directs the vendor to the vendor registration form that is used to start the process whereby BH recognizes a new vendor. Moreover, Accounts Payable insists that payment will not be made for services rendered prior to the contract execution date unless the vendor receives approval/settlement release from the Legal Department.

Finding from Second Systems Review: *The IRO determined that, as of September 2017, Accounts Payable staff had not been trained on C360 and was generally unaware of its capabilities.*

The IRO interviewed the Manager of Accounts Payable and the Supervisor of Accounts Payable, who both appear to the IRO to be now knowledgeable of C360's capabilities and are using them in the Accounts Payable Department, as described in various places in this Report.

Finding from Second Systems Review: *Internal Audit observed failures by Physician Services to monitor the tracking of remuneration paid to the physician, noting that, "The Physician Services Department does not reconcile CME payments to [the] Accounts Payable report to ensure total reimbursement does not exceed contract limits." The auditor recommended that Physician Services should "obtain the Accounts Payable 270 report and reconcile payments recorded in the CME summary worksheet..."*

The above-referenced concern of Internal Audit was repeated during the Third Reporting Period in an audit report. However, the audit almost entirely regarded CME payments made prior to the Third Reporting Period. In the audit report, Internal Audit recommended that Physician Services should "implement checks and balances to ensure that the physicians' CME seminar and travel expense limits per their Employment Agreements fall within contractual arrangements."

In BH's Response to the IRO's Second Systems Review, there was a reference that Physician Services is currently revising the CME policy. Most importantly, the IRO has confirmed with Physician Services that Internal Controls 18, 19 and 24, relating to CME, are operative. Broward Health Physicians Group maintains a spreadsheet, reconciling CME days and reimbursements to the terms of the contract. Accounts Payable affirmed that check requests for CME are received by Accounts Payable with a reconciliation of CME payments to the contract terms and it is a condition of Accounts Payable's processing of the payment request.

Finding from Second Systems Review: *The IRO considered whether Accounts Payable used any reports generated by C360, aggregating payments against all contracts associated with single individual or entity... Broward Health does not presently have the capability to aggregate payments against all contracts associated with a single individual or entity. The project is being worked on by the Director of Performance Process System Integration and Improvement and a representative of Compliance... Accounts Payable interviewees reported: AP270 does not include payments from TCA, Risk, or Payroll. Accounts Payable staff have held meetings to address being able to aggregate payments from all sources into a report.*

Deficiency: During the Third Reporting Period, Broward Health did not have internal controls in place to compensate for Tableau's inability to accurately tie payments to specific contracts for a particular physician or non-physician referral source, system wide.

According to BH's Response to the IRO's Second Systems Review, Tableau is being implemented, so that aggregate payments may be examined. As stated, BH conducted demonstrations for the IRO to view Tableau's capabilities. As described elsewhere in this Report, the IRO understands that as of the end of the Third Reporting Period, BH's employees are unsure of the accuracy and completeness of the data being collected by Tableau from C360 and the payment systems. However, Tableau's ability to provide the user with the aggregate and detail of payments to a provider or vendor appears to be functional. The problem is with connecting the individual payments to particular contracts.

BH's Response to the IRO's Second Systems Review identifies implementation of Tableau, "to assist NBHD in tracking remuneration against all contracts in place."³³ During the Third Reporting Period, Tableau could aggregate payments to a particular physician or non-physician referral source system wide, but could not tie those payments to particular contracts and there is no other mechanism in place to perform the function.

Finding from Second Systems Review: CRMM Director reported: AP270 is only generated by the Accounts Payable system. In order to generate a report where you can ensure that you are seeing all payments of all types to one vendor or physician, it would require integration of all payment systems.

See the discussion above regarding the importance of Tableau to fulfill this function for BH.

Finding from Second Systems Review: The contract and payment systems do not interface. Broward Health's goal is to accomplish it through Tableau. In the meantime, it is unclear whether Accounts Payable has or will consistently check the contract status prior to payment. Accounts Payable had not been trained in C360 at the time of the IRO's interviews in September 2017.

See the discussion above regarding Accounts Payable's practice of searching C360 prior to payment to ensure a contract is in place.

Finding from Second Systems Review: To date, Internal Audit concedes that internal audits have been primarily focused on payments to physicians, with the exception of the Outside Eyes/BHP Jumpstart investigation, which is the only non-physician referral source investigation that has been completed. There is an audit program for non-physician referral sources, but none of these audits have been completed.

The IRO interviewed the Chief Internal Auditor and he stated that Internal Audit has directed its audits exclusively to Focus Arrangements. He provided the example of *Non-Employed Physician & Vendor Payments Review (June 29, 2018)* as an example where payments to non-physician referral sources were examined by Internal Audit.

³³ Broward Health's Response to the Second Systems Review at p. 22.

C. TRACKING SERVICE AND ACTIVITY LOGS

"NBHD shall create procedures reasonably designed to ensure that each existing and new or renewed Focus Arrangement does not violate the Anti-Kickback Statute and/or Stark Law....These procedures shall include...c. tracking service and activity logs to ensure that parties to the Focus Arrangement are performing the services required under the applicable Focus Arrangement(s) (if applicable)" CIA III.D.1.c. and Appx. B, A.3.

1. Service & Activity Logs: Timekeeping for Medical Directors

The IRO identified the following issues or deficiencies during the previous systems review and has updated its findings as shown below:

Finding from Second Systems Review: *The IRO determined during interviews that while C360 is operational, there is no electronic interface between the new physician timekeeping system which replaced TERMS (Physician Time Sheet Approval System) and the Lawson payment system.*

The IRO finds that BH has compensated for the absence of its electronic interface between the timekeeping system and payment system. First, a Medical Director is blocked from entering time until Compliance confirms that a contract has been executed and places the Medical Director in the timekeeping system. Second, time entered must go through a multi-level review and approval before Payroll or Accounts Payable will make payment. Third, the timekeeping system bars entry of time by a Medical Director on an expired contract.

Broward Health, in its Response to the Second Systems Review, acknowledged that the Physician Time Sheet Approval System in ServiceNow did not interface with Lawson, but noted that multi-level approval is necessary for payment by either Payroll or Accounts Payable. Hospital CEOs confirmed to the IRO that time logs are reviewed by the CEO to ensure completeness, accuracy and consistency with the contract, with regard to Medical Directorships, in accordance with Internal Control 33.

In its Response to the Systems Review for the Second Reporting Year, BH explained that, when a new Medical Director contract becomes effective, the hospital notifies Compliance and sets in motion this sequence of events:

One of the Regional Compliance Managers will create a new timesheet in ServiceNow. Compliance reviews the contract and adds the applicable items in timesheet summary, including: type of Medical Director; effective and end dates; hourly rate; the first (Department), second (CEO or CFO) and third level (Compliance) approver; contract number, payroll viewer access to the timesheet; delineate the pay periods: biweekly or monthly; and enter the duties. Once all items are entered, Compliance activates the timesheet and...sends a notification. Automated emails are sent out to approvers when the timesheet has been completed by the

physician. Compliance is the last to approve and an automatic notification is sent to Payroll to process payment.

While there is no electronic interface between the timekeeping and payments systems, the Regional Manager of Compliance at BH Medical Center advised the IRO that the time keeping system functions as a hard stop against payment past the contract expiration date because a physician can no longer input time unless the contract has been approved by the Legal Department for holdover status.

Broward Health's Response also points to Tableau. However, as previously noted by the IRO regarding Tableau, there is an ongoing functional flaw within it because it cannot tie payments to particular contracts with accuracy.

2. Service & Activity Logs: Multiple Contracts with a Provider

***Finding from Second Systems Review:** The Physician Time Sheet Approval System does not cross reference other contracts of the physician.*

Deficiency: While Broward Health has successfully employed Tableau to aggregate payments made under all contracts, system wide, to a provider, Broward Health lacks a mechanism to tie aggregate payments to particular contracts, system wide.

The IRO finds that it remains a system weakness. Broward Health, in its Response to the Second Systems Review, pointed to Tableau and PO25 as solutions. Even though Tableau is being used by Broward Health to examine payments to a single physician being paid under multiple contracts, potentially through multiple payment systems, Broward Health has found flaws in the accuracy and completeness of data collected and organized by Tableau. More work must be done to test and ensure that Tableau is accurately drawing data from C360 and the various payment systems. While Tableau provides management with the ability to see the aggregate and detail of payments made by Broward Health to a physician, system wide, it cannot, at this time, consistently and accurately tie the payments to specific contracts.

PO25 is not a solution to this system weakness. Generally, PO25 is a tool for tracking payments to a contract and as a control to prevent payments in excess of the contract cap or the annual PO25 header line limitation. PO25 does not, however, aid in monitoring payments made to the same physician under multiple contracts.

At least within the context of concurrent call, according to Broward Health's *Requisition to Pay Physicians & Hospital Based Subsidies* (Feb. 12, 2018), the Regional MSO and Regional Contract Specialist are responsible for reviewing concurrent calls by validating schedules from all other facilities, noting when concurrent calls occur. The Regional MSO and Regional Contract Specialist are then responsible for validating the number of concurrent calls using the "consolidated On-Call report." Moreover, hospital CEOs confirmed to the IRO that if a physician is on call at their hospital, the hospital confirms that the physician is not on call the same day with another hospital, unless the arrangement is consistent with the current Fair Market Value and Commercial Reasonableness appraisal, in accordance with Internal Control 41.

3. Service & Activity Logs: Avoiding Overlapping Payments to Physicians

Finding from Second Systems Review: *The IRO notes that there is still a need for a systematic way to assure that a physician cannot get paid on multiple contracts for the same time period.*

Deficiency: Broward Health lacks a systemic method of assuring that a physician is not compensated under multiple contracts for work claimed to have been performed during an identical date and time period.

The IRO finds that this continues to be a systems weakness throughout the Third Reporting Period. Broward Health responded to the finding in the Second Systems Review that, "The appropriate employees (Manager, Supervisor and two Senior Accounts Payable Clerks) in Accounts Payable were trained in C360 and can detect multiple contracts for physicians." The IRO has interviewed Senior Accounts Payable personnel and determined that Accounts Payable does not use C360 to test whether a physician was paid twice for overlapping time entries. However, in the limited context of a situation where Accounts Payable receives pay requests for the same month on the same purchase order, Accounts Payable's payment protocols would cause the department to avoid the multiple payments. It is the view of Accounts Payable that avoiding payments to a physician for overlapping time entries would be the responsibility of Physician Services or the Medical Staff Office, not Accounts Payable.

4. Service & Activity Logs: Simultaneous or Concurrent Call Coverage

Finding from Second Systems Review: *The IRO reviewed audits by Internal Audit to determine whether physicians are being paid for tasks performed under multiple contracts for claiming simultaneous call coverage for multiple locations. None of these audits included a procedure to determine whether a physician was paid twice for the same time period.*

Deficiency: Broward Health has no policy for simultaneous call coverage.

The IRO finds the absence of a policy at Broward Health for simultaneous call coverage to be a system deficiency. However, Broward Health's system for monitoring call coverage and concurrent call coverage under PO25 assigns to the medical staff offices at the Regions the responsibility to monitor overlapping call for a physician in multiple hospitals.

During the Third Reporting Period, Internal Audit improved its monitoring of simultaneous call as evidenced by the report entitled, *Physician On-Call Audit* (March 27, 2018).³⁴ Objectives of the audit included the evaluation of whether Broward Health properly monitored physician on-call services and whether payments to physicians were consistent with their contracts' terms. Internal Audit selected a sample of 40 physicians from on-call schedules.

³⁴This audit examined transactions from July 1, 2016 through January 20, 2018.

In the audit, Internal Audit concluded that the physicians' on-call process was adequately controlled. However, the Chief Internal Auditor noted as a deficiency that Broward Health had insufficient policies and procedures to address simultaneous on-call coverage services. The Chief Internal Auditor found that several physicians had performed simultaneous on-call coverage even though it was not allowed under the physician's contract. With one exception, the physicians were not compensated for the simultaneous call. The Chief Internal Auditor found that one physician was paid for simultaneous on-call coverage in violation of the contract. Therefore, the auditor categorized the payment of \$425 to the physician as an unallowable cost.

With regard to the absence of a policy on simultaneous on-call coverage, the Chief Internal Auditor commented that several physicians provide simultaneous on-call coverage at multiple facilities. Broward Health adopted an on-call coverage policy in November 2017, but the Chief Internal Auditor pointed out that it does not address simultaneous on-call coverage. Senior Management responded that a policy will be created.

The controls established for concurrent call within PO25 appear to effectively address the system weakness. PO25 requires a special payment request form for concurrent call. The Regional MSO completes the concurrent call payment request form, which also must be signed by the Regional CFO and CEO. When receiving a payment request for concurrent call, at least one Regional CFO follows the practice of looking at the call logs at the hospitals involved and checking the rates for current call before payment is approved. The Regional MSO and Regional Contract Specialist are then responsible for validating the number of concurrent calls using the "consolidated On-Call report."

In a supplement to the audit, Internal Audit issued a report entitled, *Physician On-Call Audit: Simultaneous Call Coverage* (June 7, 2018), defining the breadth of potential simultaneous call in the NBHD system. According to the report in 2017, 52 physicians were available for on-call services at multiple hospitals. Seven of these physicians were employed by Broward Health.

D. MONITORING LEASED SPACE & PATIENT CARE ITEMS

"NBHD shall create procedures reasonably designed to ensure that each existing and new or renewed Focus Arrangement does not violate the Anti-Kickback Statute and/or Stark Law... These procedures shall include...d. monitoring the use of leased space, medical supplies, medical devices, equipment, or other patient care items to ensure that such use is consistent with the terms of the applicable Focus Arrangement(s) (if applicable)." CIA III.D.1.d. and Appx. B, A.4.

During the Third Reporting Period, Broward Health's Corporate Director of Real Estate began reporting to the Vice President of Corporate Services.

1. **Inclusion of Load Factors in Leases.** Broward Health's Response to Second Systems Review states that, effective November 11, 2017, Broward Health adds a load factor "to the usable square feet on all of its leases." According to the Response, "NBHD had all of its buildings measured and load factors for each building established." The IRO reviewed a November 5, 2017 opinion letter from Realty Trust Group regarding Broward Health's building load factors.

2. **Reconciliation of Rent Payments to Approved Lease Terms.** The Corporate Director of Real Estate was interviewed by the IRO and he confirmed that Accounts Receivable reconciles rent payments and the Director reviews these reconciliations. He stated that no issues were discovered in these reconciliations during the Third Reporting Period.

3. **Quarterly Walk-throughs.** Broward Health's Response to Second Systems Review noted that, its Real Estate Department and Meridian, its third party Realty Management Agency, conducted "quarterly walk-through office checks to verify occupancy and tenancy." It included a comparison of the space's signage and business cards with the tenant's name in the lease. The procedure is required by Broward Health's standard operating procedure for real estate leases. The Corporate Director of Real Estate confirmed with the IRO that he accompanies Meridian as they conduct the quarterly office checks. Walk-throughs, conducted in this manner and frequency are consistent with Broward Health's Standard Operating Procedure for real estate leases.

Broward Health produced to the IRO the Real Estate Office Lease Inspection Logs for the four quarters of the Third Reporting Period. The IRO reviewed the logs and confirmed that the inspections/walk-throughs were conducted throughout the Third Reporting period. The logs evidence Broward Health's monitoring of the use of space by individuals not named on the lease, including notations to add new physicians to the lease.

4. **Leases in Holdover Status.** Broward Health's Response to Second Systems Review noted that, it has one lease in hold over status where it is the tenant. According to the Response, Broward Health has no leases in holdover status where it is the landlord. During this systems review, Broward Health provided the IRO with a listing of "Full time leases with physicians and referral sources." The list shows a lease with one physician in holdover status since June 15, 2018.

5. **Time Shares are Being Eliminated.** The Response updates the status of Broward Health's transition away from time shares: "NBHD converted a majority of former timeshare tenants into full time leases. With respect to those that did not convert, the timeshare leases have either been terminated or have expired." According to the Response, only one time share lease remains and it will expire on December 31, 2018. The IRO has examined a list it received from Broward Health, entitled, *List of Full Time Leases with Physicians and Referral Sources*. The list shows one time share lease in effect as of the end of the Third Reporting Period, expiring December 31, 2018.

6. **Sub-leasing is Not Allowed.** Broward Health's Response to Second Systems Review noted that, since November 1, 2017, its Real Estate Department has required that, when a new lease is executed, the tenant is required to sign a "subleasing attestation" form, attesting that the leased property is not being sub-leased. In the event that: (1) the tenant cannot provide this attestation; (2) the tenant has a sublease in place; and (3) the tenant cannot show proof of prior landlord written approval of the sub-leasing arrangement, Broward Health's Real Estate Department sends an "unauthorized tenant default letter." The letter informs the tenant that they have 30 days to cure the default.

E. WRITTEN REVIEW AND APPROVAL PROCESS FOR ALL FOCUS ARRANGEMENTS

"NBHD shall create procedures reasonably designed to ensure that each existing and new or renewed Focus Arrangement does not violate the Anti-Kickback Statute and/or Stark Law... These procedures shall include...e. establishing and implementing a written review and approval process for all Focus Arrangements..." CIA III. D. 1.e. and Appx. B, A.5.

Through the Second Reporting Period, Broward Health operated under separate, yet substantively identical policies governing the initiation, review and approval of physician Financial Arrangements and non-physician referral source Financial Arrangements. During the Third Reporting Period in October 2017, Broward Health merged the two policies into a new Policy GA-004-441. The merger resulted in no substantive change in how Focus Arrangements between referral sources and Broward Health are initiated, reviewed and approved.

The contract initiation and approval sequence, according to new Policy GA-004-441 IV. B., applicable to contracts with physicians and non-physician referral sources is as follows:

- 1) Contract Initiator or designee completes initial contract request (B.2)
- 2) Contract Initiator or designee routes initial contract request to Compliance (B.4)
- 3) Compliance determines if there are compliance concerns with the party (B.4)
- 4) Upon approval by Compliance, Corporate Resource and Materials Management (CRMM) or Contract Administration performs due diligence on the party (B.5)
- 5) CRMM assigns assessments to the Contract Initiator or designee (B.5)
- 6) Upon completion of assessments, the Contract Initiator reviews and submits for approval (B.6)
- 7) CRMM routes Conflict of Interest form and/or Disclosure Form to the Chief Ethics Officer if there is a disclosure or "yes" on the form (B.7)
- 8) Completed assessments and supporting documentation are received by CRMM from the Contract Initiator via the C360 routing process (B.8)
- 9) CRMM reviews for completeness (B.8)
- 10) CRMM routes the contract workflow for Focus Arrangements review (B.9)
- 11) Once Focus Arrangement status is determined, the contract workflow routes to the General Counsel's office for completion of fair market value and commercial reasonableness (B.10)

- 12) Once fair market value and commercial reasonableness analysis is completed, the contract workflow routes to Contract Initiator for contract negotiations (B.11)
- 13) Once contract negotiations are complete, the contract work flow routes to General Counsel for final legal review (B.12.)
- 14) Once final legal review has been completed, the contract workflow routes to Compliance to ensure the financial arrangement meets all requirements of this policy (B.13)
- 15) CRMM receives the completed contract workflow and contract is sent to the Referral Source for signature (B.14)

A pictorial illustration of this contract initiation, review and approval process is at **Exhibit I**, entitled, "Flow Chart of Broward Health's Financial Arrangement Initiation, Review and Approval Process."

1. **"The Road to Contracts"**

Deficiency: Broward Health followed a substantively and materially different process and order of steps for the review and approval of Focus Arrangements during the latter half of the Third Reporting Period than that which was set forth in Policy GA-004-441 *Physician and Non-Physician Financial Arrangement Review, Approval, Tracking and Monitoring (Rev. Oct. 2017)*. The new process was not formalized into a written policy, in violation of Policy GA-004-236.

As demonstrated above, Policy GA-004-441 prescribes a linear process for contract initiation, review and approval. In January 2018, Broward Health initiated a "new workflow" for contracts. The new workflow remained essentially the same as the old workflow through Focus Arrangements review (steps 1-10, above). After Focus Arrangements review, contract review proceeded to "pod in process." The most useful written description the IRO has found of the new workflow was in management's response to an Internal Audit report.

Internal Audit completed an audit during the Third Reporting Period having one of its stated objectives being, "Evaluating the contract process to determine if it is operating effectively, and determine whether the contract's processing average time from initiation to execution is reasonable." In its audit report, entitled, *The Contract Process (February 6, 2018)*, Internal Audit determined that Broward Health's contract processing time was "inefficient based on industry practice." Internal Audit concluded that 30 days would be a reasonable processing time for a non-Focus Arrangement and 60 days would be a reasonable processing time for a Focus Arrangement, due to the need for a Fair Market Value report.

BH Senior Management responded to the audit report, that, "The Road to Contracts in an average of seven days was launched on January 9, 2018." Management identified three main system improvement objectives:

First, BH Senior Management announced a realignment of Contract Administration into "PODS," consisting of a contacts analyst, contracts specialist, regional contracts specialist and a representative of legal for each hospital. According to Management, "The PODS are responsible for processing due diligence screening, completion of the assessment of information within C360, contract draft and negotiation, legal terms and conditions review, compliance review, risk review, partner signature and contract execution."

Second, BH Senior Management described the development of standardized questionnaire forms and checklists for categories of contracts "to capture the information required to complete a contract and assessments." BH Senior Management explained how the new forms would purportedly improve the contracting process:

The forms are completed by the requestor prior to initiating an intake request for a contract in C360. This change in the contracting process provides a simplified, timely and user-friendly approach to gathering supporting information and compliance required documents. It also minimizes the contract processing time by providing the Contract Administration Team all necessary information and documentation in advance which minimizes delays in the process.

Third, BH Senior Management pointed to changes made to the contract workflow process in C360. BH Senior Management explained that review and approval times were longer under the old system where prospective contracts "went through many isolated steps within the process creating silos...." The changes to workflow, according to BH Senior Management, "included the elimination of isolated review stages and...a unified review process which fosters transparency, alignment and cross functionalization...." BH Senior Management's goal for the new workflow process was to reduce average processing time for a contract to seven days.

Deficiency: Policy GA-004-441 was not amended to correspond to the "Road to Contracts" process which was adopted by Corporate Resource and Materials Management ("CRMM") under the direction of the Vice President of Financial Operations.

Deficiency: Broward Health has been operating outside of the process and procedures set forth in Policy GA-004-441 since the changes to the C360 workflow were implemented on January 8, 2018. As a result, Broward Health varied from and did not follow applicable Broward Health Policies and Procedures for the Focus Arrangements identified on the FA List, which were entered into or renewed after January 8, 2018, requiring the IRO to record in this Report violations of Section C. 2 of Appendix B of the CIA for each Focus Arrangement reviewed.

Deficiency: The IRO finds that Broward Health's changes to the C360 workflow implemented on January 8, 2018, resulted in material changes made during the Third Reporting Period to the Arrangements systems, processes, policies and procedures for the initiation, review and approval of Focus Arrangements as set forth in Policy GA-004-441.

The IRO has not identified any deficiencies indicating that the new workflow has altered a fuller assessment or review by the departments of Focus Arrangements, Contract Administration, Ethics, Compliance, Legal or any other component of the process. As set forth in greater detail below, the IRO's concern is that Broward Health materially deviated from policy.

Internal Audit, in the February 2018 audit report, noted that the transition to C360 resulted in changes in procedure that needed to be in writing: "The SOP for the contract procedures have not been updated following the changes to the contract process after the implementation of the new contract management system-C360."

BH Senior Management, in its response to the February 2018 audit report, acknowledged that policy needed to be amended and set a goal to accomplish it by the end of February. BH Senior Management's response stated that, "The Road to Contracts" project "revised the contracting workflow....A final step in this project is to update the SOP for the Contract Administration Department."

It did not appear to the IRO that there was an appreciation within BH Senior Management that if the contracting sequence was to change, policy must change with it, in accordance with the approved process for changing policy. Of greater concern to the IRO is the apparent lack of recognition by BH Senior Management, who were involved in the development and implementation of changes to Broward Health's contracting procedures through C360 and "The Road to Contracts" process, that Broward Health's Compliance Policies and Procedures were approved by OCIG and that any material changes to its Compliance Policies and Procedures should be submitted to OCIG for approval. The Director of Contract Administration was interviewed by the IRO on June 25, 2018. She was unfamiliar with Policy GA-004-441. Neither Contract Administration nor Compliance appeared to recognize the need for policy to be reconciled to practice and no department undertook the responsibility for writing and vetting the new policy in a timely manner and submitting the proposed changes to the IRO or OCIG.

The IRO observed that BH Senior Management did not understand or appreciate that the proposed standard operating procedure for Contracts Administration needed to be approved by Compliance and adopted as Compliance Policy, not just internally adopted by Contract Administration as an operating procedure.

In follow-up to the Internal Audit, the Chief Internal Auditor told the IRO that Internal Audit will examine whether the transition from a linear approval process to a pod in process affects efficiency. Internal Audit has an audit program ready to examine this question. With regard to policy, the Chief Internal Auditor agreed that the policy must be updated. However, it should be acknowledged that Senior Management was proactive in addressing inefficiencies of the contracting process even before the issuance of Internal Audit's report finding the system's contracting process to be inefficient when compared with industry standard. Moreover, there are several process improvements resulting from the changes, as specified in Senior Management's response to the Internal Audit report.

In addition, a practice instituted by Senior Management as part of the new workflow is the holding of contract signing meetings every Tuesday and Friday, where a final review of the contract file is performed prior to the signing of the contract. A signature cover sheet is used as a permanent record of the sequence and completeness of the final review and sign off.

After the end of the Third Reporting Period, Broward Health's Senior Management informed the IRO that Broward Health intends, during the Fourth Reporting Period, to make additional changes to the C360 workflow by removing the "pod in process" format. The changes will again result in material changes under the CIA to Broward Health's Arrangements systems, processes, policies and procedures for the initiation, review and approval of Focus Arrangements.

2. Notification of Contract Expirations & Contracts in Hold Over Status

In August 2017, Broward Health provided the IRO with a spreadsheet of "Expired Physician Agreements," listing 130 expired contracts. Many of the contracts were not intended for renewal and were terminated. One year later, in August 2018, Broward Health issued its Response to the IRO Arrangements Systems Review Report for the Second Reporting Period, and, according to Exhibit A.3 of that Response, there are only five Focus Arrangement contracts in holdover status.

We believe that Broward Health's marked improvement in the reduction of the number of Focus Arrangements in hold over status is due, at least in part, to a better functioning system of notifying responsible parties of impending contract expirations. This is apparent from a comparison of the following finding from the IRO's previous systems review and the IRO's findings in the current systems review.

Finding from Second Systems Review: C360 does not provide automatic notification of upcoming contract expirations. Instead, Accounts Payable, Payroll and TCA have access to C360 to inquire of contract status. The IRO determined that Compliance has the capability to send automatic notifications of contract expirations. The IRO recommends that the capability be utilized by Broward Health.

According to Broward Health's Response to Second Systems Review, automatic notifications are now being generated and issued by C360. Broward Health notes that Contract Administration and Corporate Resource and Materials Management ("CRMM") have confirmed that notifications of contracts due to expire in 180 days are being sent out weekly to all Regional CEOs, CFOs and Contract Specialists. Broward Health's Response further noted that, when a contract is nearing expiration, notifications are sent 90, 60, 45, 30 and 15 days prior to expiration. These notifications are sent by email to the individual listed in the contract file as the Primary Responsible Party. In September 2018, BH Imperial Point's CFO confirmed to the IRO that she receives monthly notices of contracts scheduled to expire in 180 days. Further, Accounts Payable represented to the IRO that if a contract is on holdover, Accounts Payable does not make a payment under the expired contract unless an authorization to pay is received from the Legal Department.

3. Auto-Renewal of Contracts

Deficiency: Contracts, which go through the auto-renewal process, were not subjected to the full contract initiation, review and approval process required by Policy GA-004-441.

The *Corporate Compliance Annual Review Report: Focus Arrangement Audit* discovered several problems with Broward Health's auto-renewal process. The Internal Audit found that if a contract was going through an auto-renewal, at least in some cases, the contract was not going through a Conflict of Interest review, Ethics review or Focus Arrangements review. Overall, according to the Director of Focus Arrangements and Audits, contracts that were renewed pursuant to an auto-renewal provision, were not subjected to the contracting process as a new contract.

Policy No.: GA-004-441 requires, "The Chief Compliance Officer or his or her designee must approve the Referral Source financial arrangement (*including any renewals and amendments*) prior to transmission of the Non-Physician Referral Source Contract to the Approving Authority for review." Moreover, the CIA requires renewals to go through the process. The Director of Contract Administration commented to the IRO that Broward Health does not conduct an Ethics review on auto-renewals.

Upon request, Broward Health provided the IRO with a listing of physician agreements that are within 90 days of expiration. The IRO examined a sample of the contract files on C360, including some agreements which were or had been in the process of auto-renewal. It appears that too often, the renewal process for physician contracts begins too close to contract expiration and, as found by Internal Audit, and the contract is not subjected to the full contracting review process. For example, one contract with a physician group was set to expire May 31, 2018. On June 1, the Contract Specialist asked for the agreement to be "Admin Jumped" and auto-renewed. "Admin jump" means that the Arrangement's status is being changed in C360. The Contract Specialist's email noted that Fair Market Value was being evaluated. The Contracts Analyst responded that, according to the Director of Contract Administration, the contract would be renewed for one year to May 31, 2019.

With regard to another contract file examined by the IRO, for the PPUC program for on call fee for service, the file included an email from the Senior Contract Specialist on July 10, 2018, requesting that the contract be auto-renewed until the Fair Market Value analysis had been finalized. The expiration date for the contract, according to the email was July 13, 2018. After the expiration date, on July 24, 2018, comments were entered into the contract file by a representative of Contract Administration that, "while the new agreement has the auto-renew provision, Broward Health Coral Springs will review and modify the agreement (or enter into a new agreement) upon receipt of the new appraisal report." The IRO's review confirms that physician contracts are commonly auto-renewed following an abbreviated review and not in compliance with the requirements of Policy GA-004-441.

4. **Annual Conflict of Interest and Financial Ownership Disclosure Program for 2017**

Deficiency: Annual Conflict of Interest form disclosures and annual Financial Disclosures submitted to Broward Health by employee and non-employee physicians in November 2017 were not reviewed by the Chief Ethics Officer or the Ethics Manager for the existence of an actual, potential or appearance of a Conflict of Interest.

Broward Health supplied the IRO with a spreadsheet listing 257 employed physicians, who electronically submitted Conflict of Interest form disclosures by the November 2017 deadline. Broward Health's Chief Ethics Officer vacated his position with Broward Health on December 4, 2017, causing Broward Health to be without an Ethics Manager for over two months. As a result, the disclosures have not been reviewed by Broward Health. The IRO determined the annual disclosure forms submitted by non-employee physicians are being kept in boxes and have not been reviewed.

The current Ethics Manager joined Broward Health in February 2018. With regard to the contracting process, she confirmed that if the Conflict of Interest form or the Disclosure Form for Physician Ownership and Financial Arrangements contained a response to any question that was other than a "no," the form was routed to the Ethics Manager for review. The process is consistent with the *NBHD Supplement to Second Annual Report* (Sept. 17, 2018) p. 17-18, which provides that, during the contract initiation process, if a Business Partner's Conflict of Interest form or Financial Disclosure form includes any disclosures, the information is routed to the Ethics Manager for review: "The Ethics Manager reviews the disclosures as well as relevant contractual language or other agreements with that individual or entity to determine whether a conflict exists. If it does, the Ethics Manager will notify the Legal Department to determine whether the conflict can be managed.... This process is documented by the Ethics Manager in Compliance 360."

C360 generates a spreadsheet, which was provided to the IRO, entitled "Conflict of Interest & Disclosure Form for Physician Ownership and Financial Arrangements Completed Reviews." The spreadsheet is a record of the Ethics Manager's review of the forms during the contracting process. The spreadsheet preserves the Ethics Manager's notations as to the issues she saw on 348 of these Conflict of Interest and Financial Disclosure forms and how she resolved the issues. Ultimately, prior to contract signing, a paper copy of the Conflict of Interest form and Financial Disclosure form is reviewed by Focus Arrangements and Compliance Department approvers. The approvers review whether disclosures were made, and if so, the comments by the Ethics Manager regarding the disclosures are also reviewed during the final contract review meeting.

The IRO reviewed certain contract files in C360, testing whether COI/FOD forms in the contract file were signed within 60 days of the effective date of the agreement. The IRO found, for the contract files examined that with one exception, the file contained either a timely COI/FOD or an attestation affirming that no changes were needed to the full COI/FOD on file. The IRO also noted substantive comments in the contract files by the Ethics Manager, explaining the disclosure being examined and the manager's resolution of the disclosure. In one contract file, the manager evidenced her review of an older COI/FOD (August 2017), showing disclosures and its inconsistency with a more recent COI/FOD, including disclosures. In that case, the Ethics Manager documented in the contracts file the resolution of the disclosure that had been included in the older form.

5. **Internal Audits Relating to Internal Review and Approval of Arrangements**

Employed Physician Payment Review (July 2018) The audit reviewed the contract files of 40 physician contracts, haphazardly selected. The contracts were in effect during some time period between July 2016 and May 2018. An objective of the audit was to determine whether the selected physician's contract was subject to Broward Health's internal review and approval processes. With regard to each of these contracts, Internal Audit found that "BH and all parties signed all forty contracts."

F. COMPLIANCE OFFICER'S ANNUAL REVIEW AND REPORTING

"[T]he IRO shall review. . .the Compliance Officer's annual review of and reporting to the Compliance Committee on the Focus Arrangements Tracking System, NBHD's internal review and approval process, and other Arrangements systems, process, policies, and procedures " CIA III.D.1.f. and Appx. B, A. 7.

1. Compliance Officer's Annual Review

Broward Health Compliance and Ethics Policies applicable to this review included:

Policy No.: GA-004-250 IV.B. 2: *Broward Health's Chief Compliance Officer's responsibilities will include, but are not limited to:*

- a) Developing, overseeing, implementing, auditing, and monitoring the compliance requirements of Broward Health's Compliance and Ethics Program;*
- b) Developing and implementing policies, procedures, and practices designed to promote compliance with Applicable Federal and State Requirements and the requirements set forth in the Corporate Integrity Agreement ("CIA");*
-

q) Reviewing the contract database, internal review and approval process, and other Focus Arrangement procedures on at least an annual basis and providing a report on the results of such review to the Board Compliance and Ethics Committee.

The BH then-CCO furnished the IRO with a draft of BH's July 19, 2018 "Corporate Compliance Annual Review Report: Focus Arrangement Audit." The then-CCO noted that the draft report was being updated based on new and recent findings and would be presented to the Board Compliance and Ethics Committee at its August 2018 meeting. The then-CCO provided the IRO with the updated September 13, 2018 Corporate Compliance Annual Review Report after the end of the Third Reporting Period. A copy of the report is attached as **Exhibit J**.

According to the report, BH randomly selected 30 contracts pulled from the database of Compliance 360 and reviewed each selected contract and related documents to ensure internal review and approval process and other Focus Arrangement procedures were followed and properly documented as required by Policy GA-004-441, Section IV. The contracts reviewed were executed between August 31, 2017 and June 1, 2018.

The IRO finds that the report contained an unacceptably high error rate for contracts executed under the old workflow prior to the change to the C360 workflow that was implemented on January 8, 2018. Under the "old workflow," multiple items were missing including Conflict of Interest forms, Financial Disclosures forms, Focus Arrangement reviews, Ethics review, Fair Market Value and Commercial Reasonableness reports, documentation of General Counsel's Office review and approval and Corporate Compliance Department review and approval. Eight out of 30 contracts were missing assessments.

The report found that auto-renewal agreements did not follow the due diligence process and were not submitted for Focus Arrangements review or Ethics review. The OIG considers auto-renewals to be "renewed arrangements" and should be subjected to Focus Arrangements, Ethics and Legal review required under the CIA and Broward Health's Policy GA-004-441.

The report also found that a majority of the contracts executed under the C360 workflow contained the required documentation and captured the steps required for Focus Arrangements under Policy GA-004-441. However, errors were found in all but two categories reviewed for contracts executed under the C360 workflow.

Deficiency. The findings in the Corporate Compliance Annual Review Report: Focus Arrangement Audit, dated July 19, 2018, support the IRO's independent conclusion that during the Third Reporting Period Broward Health's Focus Arrangements Tracking System continued to have serious deficiencies as a result of the failure to migrate data maintained in the MediTract system to C360.

It has been reported to the IRO that Broward Health will continue to maintain MediTract because there is a lack of confidence in being able to retrieve from C360 all the assessments and other supporting data concerning Focus Arrangements that were initially placed in MediTract.

2. Assessing the Need for New Written Policies

Broward Health Compliance and Ethics Policies applicable to the review include:

Policy No.: GA-004-236 IV.A.1.: *"Broward Health's Chief Compliance Officer and Chief Ethics Officer will be responsible for Broward Health's Compliance and Ethics Program to determine whether new written policies related to specific issues are needed and whether existing policies should be amended."*

The BH CCO gave the IRO a report on the status of revised and draft policies prior to the end of the Third Reporting Period.

a. Current Active Policies that were Revised during the Third Reporting Period

GA-004-233 Disclosure Program (PolicyStat ID: 4062907) (Last Revised 09/2017)

GA-004-234 Open Lines Of Communication (PolicyStat ID: 4069174) (Last Revised 09/2017)

GA-004-236 Creation, Amendment and Approval Of Compliance And Ethics Policies (PolicyStat ID: 4061781) (Last Revised 09/2017)

GA-004-250 Chief Compliance Officer: Appointment, Roles, and Responsibilities (PolicyStat ID: 4176436) (Last Revised 10/2017)

GA-004-251 Compliance Committee: Appointment, Roles and Responsibilities. (PolicyStat ID: 5052503) (Last Revised 06/2018)

GA-004-290 Background Screening And Ineligible Persons (PolicyStat ID: 4176476) (Last Revised 10/2017)

GA-004-305 Non-Retaliation Policy (PolicyStat ID: 4069230) (Last Revised 09/2017)

GA-004-441 Physician and Non-Physician Financial Arrangement Review, Approval, Tracking and Monitoring (PolicyStat ID: 4128203) (Last Revised 10/2017)

b. Draft Changes to Policies

Deficiency: Broward Health's delay in adopting needed changes to Policy GA-004-441 during the Third Reporting Period resulted in a variance from Policy GA-004-441 and, therefore, a deficiency under Policy No. GA-004-236 IV.A.1.

The CCO reported that two of the above policies are being modified to reflect current practice, which is different from that stated in the two policies. He provided the IRO with drafts of the following policies indicating the proposed changes:

GA-004-236 Creation, Amendment and Approval Of Compliance And Ethics Policies (PolicyStat ID: 4061781) (Last Revised 09/2017). The policy is being changed to remove the Chief Ethics Officer's responsibilities and to place these responsibilities under the Chief Compliance Officer who now has the responsibilities of the former Chief Ethics Officer.

GA-004-441 Physician and Non-Physician Financial Arrangement Review, Approval, Tracking and Monitoring (PolicyStat ID: 4128203) (Last Revised 10/2017) Policy GA-004-441 has not been changed to incorporate the process changes implemented with changes to Compliance 360. Broward Health has been operating outside of the procedures set forth in this Policy since the changes to the C360 workflow were implemented on January 8, 2018.

Changes have been incorporated in a draft of Policy GA-004-441 to reflect the changes in Compliance 360 to allow for the POD process. In addition, Broward Health Senior Management is reviewing the Compliance 360 process and there may be further changes made to the Compliance 360 process. For example, the BH CCO noted that the Ethics review of an Arrangement needs to be done before the Legal review because comments received from the Ethics review could require changes to the contract terms, which would need to be reviewed by Legal. He also noted that when a contract supersedes another contract, there needs to be a follow-up to terminate the prior contract. In addition, the CCO provided the IRO with a document entitled "*Compliance 360- Exceptions to Workflow Steps for Auto-renewals, Extensions, Amendments and Terminations.*" The measures will need to be added to Policy GA-004-441.

c. **Policies pending approval in Policy Stat**

GA-004-410 Fair Market Valuation And Commercial Reasonableness Policy was sent to the OIG Monitor, July 2017, and is pending approval. While it is not considered final, Broward Health is operating under the policy.

3. **Draft Processes and Procedures**

Deficiency. Broward Health's failure to adopt a policy to formalize the Standard Operating Procedure for Tracking Remuneration of all Entities during the Third Reporting Period is a deficiency under Policy No. GA-004-236 IV.A.1.

Process #320, Monthly Compliance and Ethics Report, (Revision date 8/2018). The process will be put in Policy Stat and will have a process number. Separate bi-monthly certifications will no longer be required. Instead, the certifications will be built into and made a part of the Monthly Compliance and Ethics Report Form.

Standard Operating Procedure for Tracking Remuneration of all Entities considered Focus Arrangements: The Compliance Department provided the IRO with the procedure. It had not been submitted to Policy Stat and was not a formal policy or procedure. The CCO confirmed the SOP was prepared to describe the responsibilities of the Manager of Tracking Remuneration and the procedures to review, monitor and audit contracts/payments.

4. **Processes & Procedures Implemented or Proposed, but Not Formalized as a Standard Operating Procedure or Policy**

Deficiency. Broward Health's failure to adopt or update Compliance Policies and Procedures for practices and processes implemented or proposed during the Third Reporting Period resulted in a deficiency under Policy No. GA-004-236 IV.A.1.

The IRO found the following practices which should be implemented as Compliance Policies and Procedures:

- Accounts Payable representatives reported that they had prepared a manual to describe the process and procedure for use of the PO25. The manual was not provided to the IRO due to it being in draft form. It was not adopted as a formal policy during the Third Reporting Period.
- There is no formal written Policy or operating Procedure requiring Internal Audit and Compliance to do annual compliance audit of payments from All Pay Sources.
- The Compliance Department has not updated the Compliance Operating Procedures to set a time frame to review and close Compliance Activities.
- The Compliance Department has not updated the Compliance Policies and Procedures to set a time and procedure for receipt of responses from departments on referred disclosure activities.
- A Policy on Vendor Gratuities has not been proposed.
- A Policy or operating Procedure which addresses the use of Tableau has not been proposed.

Deficiency: The failure to adopt a formal policy or comprehensive listing of internal controls for the tracking of remuneration relating to Focus Arrangements during the Third Reporting Period is a deficiency under Policy No. GA-004-236 IV.A.1.

Internal controls for Tracking Remuneration have not been adopted as a Compliance Policy.

**G. IMPLEMENTATION OF RESPONSES FOR SUSPECTED VIOLATIONS
OF ANTI-KICKBACK LAW AND STARK LAW**

"[T]he IRO shall review...NBHD's systems, policies, processes and procedures for implementing effective responses when suspected violations of the Anti-Kickback Statute and Stark Law are discovered, including disclosing Reportable Events and quantifying and repaying Overpayments when appropriate" CIA III.D.1.g. and Appx. B, A.8.

There are various methods by which Broward Health employees, providers and others can report suspected violations of the Anti-Kickback Statute and the Stark Law. The Compliance Program of Broward Health includes a Disclosure Program whereby Broward Health can identify, investigate and remediate instances of non-compliance with applicable federal and state laws. As a part of the program, Broward Health workforce members are responsible for reporting Compliance Issues and Ethics Issues on a monthly basis. In addition, workforce members, providers, patients and their families and others are encouraged to report to the Compliance Department any suspected violations of laws. To encourage these reports, the Compliance Department operates a dedicated anonymous hotline.

To test the systems, policies, processes and procedures established by Broward Health for implementing effective responses when suspected violations of the Anti-Kickback Statute and Stark Law are discovered, the IRO reviewed the responses by the Compliance Department to reports of suspected violations of these laws received through: (1) the Compliance Disclosure Program; and (2) the submission of monthly Compliance and Ethics Reports to the Compliance Department.

In the Second Reporting Period, the IRO found that there were more than 100 disclosure activities, which remained open and unresolved and referrals made from Compliance to other departments, which were not closed. Many archived items were Monthly Compliance and Ethics Reports, some of which were used by the reporter to report suspected violations of law, but for which a disclosure activity was not opened.

During the Third Reporting Period, the IRO conducted interviews and reviewed the Compliance Disclosure Log in Comply Tract to evaluate and assess the Compliance Department's review of exceptions noted in the Monthly Compliance and Ethics Reports and the number and status of open disclosures in Comply Tract.

1. **Monthly Compliance and Ethics Reports. CIA Section III. G. Disclosure Program**

Deficiency. The Compliance Department failed to timely review the management exceptions contained in the Monthly Compliance and Ethics Report and to open disclosure activities in the Disclosure Log to be assessed and/or investigated. These are serious and ongoing deficiencies in Broward Health's compliance with the requirements contemplated by Sections III. D. and G. of the CIA.

The Compliance Department completed a review of the Monthly Compliance and Ethics Reports submitted prior to April 2017 and identified exceptions to the management certifications for which disclosure activities should have been opened in the Disclosure Log in the Comply Track system. The report was not furnished to the IRO prior to the end of the Third Reporting Period.

The Compliance Department did not open disclosure activities in the Disclosure Log for the management exceptions contained in the Monthly Compliance and Ethics Reports reviewed and the exceptions identified as disclosures have not been assessed or investigated by the Compliance Department. In addition, the Compliance Department has not reviewed the Monthly Compliance and Ethics Reports submitted since April 2017 for disclosure exceptions. Accordingly, exceptions made on the Monthly Compliance and Ethics Reports submitted during a portion of the Second Reporting Period and throughout the Third Reporting Period have not been reviewed to identify disclosures, which should be added to the Disclosure Log. As a result, the IRO was not presented with the opportunity to assess or investigate them.

BH recently hired a new Regional Compliance Manager, who has been assigned the task to review the Monthly Compliance and Ethics Reports.

2. **ComplyTrack Open Disclosure Activities - CIA Section III. G. Disclosure Program**

Deficiency. The IRO is concerned about the aging of disclosures, which remain open on the Disclosure Log in Comply Track, and the time it takes Broward Health to assess, investigate, resolve and close disclosure activities. The IRO finds it to be a deficiency in Broward Health's compliance with the requirements of Sections III. D and G of the CIA.

BH reported in its Response to IRO Report on Arrangements Systems Review for Second Reporting Period that as of August 17, 2018, the Compliance Department had reviewed and resolved 504 activities on the Disclosure Log during the Third Reporting Period. In addition, BH reported that, as of August 17, 2018, approximately 40 disclosure activities are open from the First Reporting Period.

Based on its independent review of the Disclosure Log, the IRO found that as of September 4, 2018, there were 59 disclosure activities open from the Second Reporting Period and 184 disclosure activities open from the Third Reporting Period. At the time of our review, the total of the disclosure items, which remain open from the First, Second and Third Reporting

Periods was 283. The IRO did not include correspondence logged in the Disclosure Log or reports of overpayments in calculating the number of open disclosure activities, but did include HAS Reports and disclosures relating to HIPAA compliance.

Of the 184 disclosure activities open from the Third Reporting Period, 102 were opened before June 1, 2018, reflecting a period of three to 12 months from the date of the disclosure without closure. The 59 disclosure activities opened in the Second Reporting Period are one year to two years old.

In the IRO's prior reports and through its interviews with BH personnel, the IRO has made observations and recommendations relating to this matter.

- The IRO recommended that the Compliance Department maintain a report on aging matters to ensure accountability and monitor and measure action by Compliance personnel. BH's Compliance Department did not prepare or use written reports on aging during the Third Reporting Period. However, the then-CCO noted that he routinely meets with members of the Compliance Department, who are assigned the responsibility to review, assess and or investigate activity matters on the Disclosure Log.
- The IRO recommended that the Compliance Department update its Compliance Operating Procedures to set time frames to review and close Compliance Activities. It was not done during the Third Reporting Period.
- The IRO recommended that the Compliance Department formally memorialize in a Compliance Policy and Procedure the time set for receipt of responses from Departments on referred items. It was not done during the Third Reporting Period. The then-CCO reported that it is the practice of the Compliance Department to send out an email with a stated two week time expected for response. If after two emails there is no response, then the Compliance Department will send another email with copies to the individual's supervisor.

Deficiency. The failure by Broward Health to timely review, assess, investigate and resolve and close disclosure activities evidences deficiencies in the implementation and operation of Broward's Disclosure Program required by Section III. G. of the CIA and raises serious questions as to whether Broward Health has in place staffing, systems, policies, processes and procedures for implementing effective responses when suspected violations of the Anti-Kickback Statute and Stark Law are discovered as required by and in compliance with Section III. D.1.g. and Appx. B, A.8. of the CIA.

The aged open disclosure activities reviewed by the IRO identify issues or questions associated with BH's conduct, practices or procedures with respect to a federal health care program believed by the reporter to be a potential violation of criminal, civil or administrative law. The aged open disclosure activities include Hotline Reports and Requests for Guidance on compliance issues. The IRO is concerned that some of the open disclosure activities involve allegations of potential violations of the Anti-Kickback Law or the Stark Law, which have not

been timely reviewed, assessed, investigated and/or evaluated to determine if a violation of law occurred and whether corrective action is required. Many of the disclosures reflect recurring issues with call coverage, expired contracts and employed physicians, which have been identified by the IRO during the First and Second Reporting Periods as risk areas.

In addition to the open disclosure activities, the IRO reviewed closed activities. The IRO found a small number of activities which were closed as "unsubstantiated" in which the reported allegations appeared to be credible, but the investigation was closed after interviews of the parties involved. The individual whose activities were the subject of the report would deny the allegation and the matter would be closed. The IRO is concerned that closure for lack of substantiation may reflect a limited investigation of the facts and desire by personnel in the Compliance Department to close the activity without a thorough investigation.

3. Annual Risk Assessment required by CIA Section III. F. Risk Assessment & Internal Review Process

Deficiency. The IRO finds that Broward Health's failure to conduct a Risk Assessment during the Third Reporting Period results in a deficiency in its compliance with the requirements contemplated by Section III. F. of the CIA and raises serious questions as to whether Broward Health has in place staffing, systems, policies, processes and procedures for implementing effective responses when suspected violations of the Anti-Kickback Statute and Stark Law are discovered as required by and in compliance with Section III. D.1.g. and Appx. B, A.8. of the CIA.

The Annual Risk Assessment Summary required by CIA Section III. F. Risk Assessment & Internal Review Process was not done during the Third Reporting Period. The IRO interviewed the CCO on his plan for meeting this requirement of the CIA. He stated that he was working on the Annual Risk Assessment Summary for the Third Reporting Period with plans to take it to the September 2018 Board Compliance and Ethics Committee meeting and to submit it to the OIG with Broward's Third Annual Report. He also noted that Risk Assessment Surveys were not distributed to or completed by certifying personnel during the Third Reporting Period.

OCIG Senior Counsel Laura Ellis addressed the Risk Assessment process in an August 10, 2018 letter to the then-CCO. She stated that the Risk Assessment and Internal Review Process was intended to be a collective process engaged in by Compliance, Legal and Department leaders, working together, to determine the risks faced by BH. It was not intended to be a process implemented or worked on solely by the Chief Compliance Officer or the Compliance Department with assistance from others, as needed. The IRO agrees with the OIG that the Risk Assessment and Internal Review Process should be an inclusive, comprehensive, leadership-driven process.

During the IRO's interview, the CCO identified the following as risk areas, which will need to be identified in the Risk Assessment for the Third Reporting Period:

- Misrepresentation by Regional administrative personnel to Procurement of the aggregate compensation amount of a contract in order to bypass Broward Health's required RFP process;
- Submission of one-time purchase orders to and approved by Procurement on recurring and repeated occasions, with no contract ever being signed;
- Focus Arrangements continuing in holdover status; and
- Physician Services making payments for Personal Leave to Broward Health employed physicians in order to increase compensation to the top of the base compensation allowed under the physician's employment contract.

In addition, the IRO is aware of other matters under review by BH's Compliance and Legal Departments to determine whether they represent probable violations of law which could require a self-disclosure submission under the Anti-Kickback Statute or the Stark Law and result in a Reportable Event under the CIA.

4. **Annual Compliance Audit of Payments from All Pay Sources, including Accounts Payable, Payroll & TCA**

The audit was conducted by the Manager of Remuneration Tracking in the Compliance Department and by Internal Audit. The audit findings were recorded in a work paper, but a written report was not issued or furnished to the IRO.

5. **Board Compliance and Ethics Committee Meetings. CIA Sections III. A. 1.B and III.3.a**

Deficiency. The failure of the Board Compliance and Ethics Committee to meet during the last quarter of 2017 represents a deficiency in Broward Health's obligations under Section III. A. 2 of the CIA which requires the Compliance Committee to meet at least quarterly and Sections III. A. 1. B and III.3.a. of the CIA, which requires a committee of the Board to meet at least quarterly with the Chief Compliance Officer.

The IRO requested copies of the minutes of meetings of the Board Compliance and Ethics Committee held during the Third Reporting Period. The IRO was provided minutes of Compliance Committee meetings held on March 21, 2018 and May 30, 2018. A meeting was also held on July 18, 2018, but minutes were not finalized and produced to the IRO before the end of the Third Reporting Period. In the IRO's review of BH's website, it was unable to find that the Board Compliance and Ethics Committee met in the last quarter of 2017.

6. Reportable Events. CIA Sections III. I, Section III. J. and Section III. K.

During the Third Reporting Period, BH acted upon and disclosed three Reportable Events to the OIG as required by and in compliance with Sections III. I, Section III. J. and Section III. K. of the CIA.

a. Anti-trust Reportable Event

BH submitted to the OIG a Reportable Event regarding a joint contracting arrangement related to its Best Choice Plus network for its employee health plan that potentially implicates federal Anti-trust laws. BH and its attorneys have met multiple times with the FTC and are responding to additional requests for information/documents.

b. Potential Stark Violations Resulting in Reportable Events

Deficiency. Although Broward appears to have implemented an effective response to potential Stark Violations by making SRDP Submissions and disclosing them as Reportable Events as required by CIA Section D.1.g., the IRO questions whether the significant time delay in discovering the potential violations represents a deficiency in the review and approval process or the operation of such process for determining and documenting the Fair Market Value of remuneration specified in Focus Arrangements required by CIA Section D.1.g.

During the Third Reporting Period, BH made two submissions involving probable violations of the Stark Law to the Centers for Medicare & Medicaid Services through the Self-Referral Disclosure Protocol ("SRDP"). The SRDP Submissions resulted in Reportable Events under the CIA, which were disclosed to the OIG. The submissions are:

- [REDACTED] SRDP signed December 11, 2017
- [REDACTED], SRDP signed May 13, 2018

BH produced copies of the SRDP Submissions to the IRO.

In its SRDP Submissions, BH disclosed that Dr. [REDACTED] and Dr. [REDACTED] were paid compensation in excess of Fair Market Value for partial contract periods in 2014 and 2015. In August 2014, BH settled the *qui tam* matter under the False Claims Act alleging violations of the Stark Law with respect to Broward's employment arrangements with nine physicians for a period of time ending on May 31, 2014. Both Dr. [REDACTED] and Dr. [REDACTED] were named as settlement doctors in the Settlement Agreement. The partial contract periods were identified in the SRDP Submissions as the period of disallowance under the Stark Law as a result of the excess compensation payments. The partial contract periods followed and were outside of the period of time covered by the Settlement Agreement, which ended on May 31, 2014.

Prior to the expiration of the employment agreements with Dr. [REDACTED] and Dr. [REDACTED] which are the subject of the SRDP Submissions, BH engaged Integrated Healthcare

Strategies to evaluate proposed compensation under new employment arrangements and render Fair Market Value and Commercial Reasonableness opinions relating to them. Integrated Healthcare Strategies issued an opinion, dated February 24, 2015, concerning Dr. [REDACTED]'s compensation and an opinion, dated May 20, 2014, concerning Dr. [REDACTED]'s compensation.

The SRDP Submissions reported that the actual cash compensation paid by BH to Dr. [REDACTED] and to Dr. [REDACTED] for services performed during the 2014 Contract Year exceeded the Fair Market Value compensation cap approved by Integrated Healthcare Strategies for the new contract period. Dr. [REDACTED]'s compensation was 14% higher and Dr. [REDACTED]'s compensation was 44 percent higher than the Fair Market Value compensation caps approved by Integrated Healthcare Strategies for their respective employment arrangements. Because the compensation paid to Drs. [REDACTED] and [REDACTED] for services performed during the 2014 Contract Year exceeded the Fair Market Value compensation cap that took effect immediately following the 2014 Contract Year, Broward Health determined that it could not confirm that the financial relationship during the Partial 2014 Contract Year, complied with the Stark Employment Exception.

The IRO commends BH for reviewing and investigating these matters, making the SRDP Submissions and disclosing the Reportable Events. With regard to the specific instances, they evidence BH's compliance with its obligations under Section III. D.1. g and Appx. B, A.8. of the CIA. However, the IRO remains concerned that the SRDP Submissions involve compensation paid to employed physicians, which were not identified as potential Stark violations until the Third Reporting Period under the CIA. The date of discovery by BH that it may have received an overpayment because it failed to comply with the Stark Law was identified as November 2, 2017 in the SRDP Submission relating to Dr. [REDACTED] and as May 7, 2018 in the SRDP Submission relating to Dr. [REDACTED].

c. **Pending Investigations Identified in Broward SRDP Submissions which May Result in Future Reportable Events**

Deficiency. Broward Health is required by CIA Section III. K. to conduct an appropriate review or investigation of allegations of matters that may involve a "Reportable Event" and if Broward determines after a reasonable opportunity to conduct such review or investigation, that there is a Reportable Event, Broward is to notify the OIG in writing, within 30 days after making the determination that the Reportable Event exists. The IRO leaves it to the OIG to determine whether Broward Health is meeting its obligations to investigate and report Reportable Events in a reasonable and timely manner.

In its SRDP Submissions, BH noted that it has numerous employment agreements with physicians and that it is in the process of reviewing other physician employment agreements to confirm compliance.

In the SRDP Submission relating to Dr. [REDACTED], BH reports that it is making another SRDP Submission relating to the services of an Advanced Practice Registered Nurse ("APRN") that were not specifically covered under agreements to provide trauma services at one of BH's hospitals, BH North. The IRO was informed of the status of Broward Health's review into the APRN matter during the Third Reporting Period, but as of the end of the Third Reporting Period BH had not filed a Reportable Event for the matter.

7. Matters Identified for Review as Possible Reportable Events

In the Third Reporting Period, BH engaged outside legal counsel to review and investigate certain matters and advise BH as to: (1) whether any of the matters involve probable violations of the Anti-Kickback Statute or the Stark Law and (2) whether there is a Reportable Event arising from the matters. Other matters were assigned to the Corporate Compliance Officer for review. The review of these matters was not completed or reported to the IRO during the Third Reporting Period.

The IRO will review and monitor BH's actions to determine whether BH as required by CIA Section III. K. conducts an appropriate review or investigation of allegations relating to these matters and whether BH makes the required reports to the OIG if it determines after a reasonable opportunity to conduct such review or investigation, that there is a Reportable Event arising from these matters:

In addition, the IRO will review BH's findings as part of the Systems Review and determine whether deficiencies in BH's systems, policies and procedures for timely, thorough investigation of Compliance Issues and Ethics Issues contributed to unreasonable delays in conducting investigations and making determinations as to whether any of these matters involve probable violations of the Anti-Kickback Statute or the Stark Law and whether there is a Reportable Event arising from any of these matters.

The IRO will continue to review and determine whether BH is meeting its obligations under its Compliance and Ethics Policies as set forth below:

Policy No.: GA-004-242 II: *This policy establishes a policy and procedure for Broward Health to establish a process for timely, thorough investigation of Compliance Issues and Ethics Issues, and prompt corrective and/or disciplinary action.*

Policy No.: GA-004-242 III: *"Broward Health will take appropriate steps to identify, investigate and remediate instances of non-compliance with Applicable Federal and State Requirements...."*

Policy No.: GA-004-242 IV. A.1: *"Broward Health Workforce Members are responsible for reporting Compliance Issues and Ethics Issues based on a good faith belief that such Compliance Issue or Ethics Issue has occurred. Reports may be made in accordance with the Broward Health Disclosure Program Policy, Policy No. GA-004-233.*

Policy No.: GA-004-233 IV.A.2: *"Anonymous Hotline. Workforce Members and patients and their families can make reports through the 24-hour Anonymous Hotline."*

Policy No.: GA-004-238 IV.A.7: *"For violations of Applicable Federal and State Requirements and Broward Health's Corporate Compliance Ethics Requirements, appropriate disciplinary and/or corrective measures will be determined by the Chief Compliance Officer in consultation with Human Resources, the General Counsel, and the Chief Ethics Officer or management, as appropriate."*

Policy No. GA-004-233 IV A.4: *"Monthly Compliance Reports. Certain Broward Health employees are responsible for providing a monthly report on topics listed below to the Chief Compliance Officer:*

a) Billing, coding, payment, and documentation

b) Physician and/or Referral Sources

...

e) Medical Necessity

f) Violations of Policies and Procedures"

Policy No.: GA-004-233 IV.A.2: *"Anonymous Hotline. Workforce Members and patients and their families can make reports through the 24-hour Anonymous Hotline." If the Chief Compliance Officer receives a report through the Anonymous Hotline that is determined to be an Ethics Issue, the Chief Compliance Officer is responsible for routing that report to the Chief Ethics Officer."*

Policy No.: GA-004-233 IV.A.3: *"Broward Health members of the Board, officers, directors, managers and other supervisory employees have a duty to provide reports of Ethics Issues upon receipt to the Chief Ethics Officer or his or her designee."*

Policy No.: GA-004-234 IV.A.1: *"In the event of any questions or concerns regarding Broward Health compliance and ethics policies, practices, or procedures, Workforce Members can seek clarification from the Chief Compliance Officer, the Chief Ethics Officer, or the General Counsel by contacting them directly via email or phone."*

Policy No.: GA-004-234 IV.A.3: *"If a Workforce Member reports any Ethics Issue to a supervisor, department director, manager, or other supervisory employee, that supervisor, department director, manager, or other supervisory employee is expected to immediately forward the report to the Chief Ethics Officer."*

Policy No.: GA-004-238 IV.A.7: *"For violations of Applicable Federal and State Requirements and Broward Health's Corporate Compliance Ethics Requirements, appropriate disciplinary and/or corrective measures will be determined by the Chief Compliance Officer in consultation with Human Resources, the General Counsel, and the Chief Ethics Officer or management, as appropriate."*

Policy No.: GA-004-238 IV.B.1: *"Adherence to Applicable Federal and State Requirements and Broward Health's Corporate Compliance and Ethics Requirements is an element of each Broward Health employee's performance evaluation."*

H. ENSURING COMPLIANCE WITH NEW FOCUS ARRANGEMENTS REQUIREMENTS

"NBHD's systems, policies, processes and procedures for ensuring that all new and renewed Focus Arrangements comply with the Focus Arrangements Requirements set forth in Section III.D.2 of the CIA" CIA III.D.2. and Appx. B, A.9.

Deficiency. Not all Focus Arrangements comply with the Focus Arrangements Requirements set forth in Section III.D.1 of the CIA and Appendix. B. A. 9.

The IRO reviewed deficiencies identified in the Third Reporting Period with respect to the requirement. The September 13, 2018 "Corporate Compliance Annual Review Report of the Focus Arrangement Audit" found that two of the 30 contracts reviewed did not include the required Focus Arrangements and Covered Person provisions. Another contract was labeled "unable to determine" due to the fact that the contract in the workflow did not match all of the other information in the workflow and it was determined to be a draft for a different agreement.



CERTIFICATION OF INDEPENDENCE

BAKER DONELSON

CERTIFICATION OF INDEPENDENCE

Baker, Donelson, Bearman, Caldwell & Berkowitz, P. C. (“Baker”) has been engaged by North Broward Hospital District (“BH”) to serve as the Independent Review Organization (“IRO”) as required by the Corporate Integrity Agreement (“CIA”) between the Office of Inspector General of the Department of Health and Human Services and BH with an Effective Date of August 31, 2015.

This certification is being delivered pursuant to and in compliance with Section III. E. 4. of the CIA for purposes of certifying and affirming that Baker has (a) evaluated its professional independence and objectivity (i) with respect to the Arrangements Systems Review conducted by the IRO under Section III. E. and described on Appendix B of the CIA and (ii) in the preparation of the Arrangements Systems Review Report to which this Certification of Independence is appended and made a part thereof, and (b) has concluded that it is, in fact, independent and objective in accordance with the requirements specified in Appendix A to the CIA.

Baker certifies and confirms the following:

1. Except for its engagement by BH to serve as the IRO required by the CIA, Baker has no current and has had no prior engagements or agreements with BH.
2. Baker has reviewed the standards governing professional independence and objectivity set forth in the United States Government Accountability Office Government Auditing Standards (Revised 2011) (the “GAO Government Auditing Standards”).
3. Baker has evaluated its professional independence and objectivity (as defined in the GAO Government Auditing Standards) (i) with respect to the Arrangements Systems Review (which is a component of the Arrangements Review) conducted by the IRO under Section III. E. and described on Appendix B of the CIA and (ii) in the preparation of the Arrangements Systems Review Report to which this Certification of Independence is appended and made a part thereof.
4. Baker has concluded that it is, in fact, independent and objective, in accordance with the requirements specified in Appendix A to the CIA.
5. Baker has conducted its IRO responsibilities under the CIA with respect to BH with professional independence and objectivity as defined in the GAO Government Auditing Standards.

Additionally, Baker confirms its prior Certification of Independence under the GAO Government Auditing Standards governing independence and objectivity relating to familiarity threats and certifies and affirms that no one participating in the IRO engagement relating to BH has any of the following:

1. A family or personal relationship with a District "Covered Person," as that term is defined under the Corporate Integrity Agreement between the Office of Inspector General of the Department of Health and Human Services and the District.
2. A close or immediate family member, who is a principal or senior manager of the District, pursuant to §A3.06 a. of the United States Government Accountability Office Government Auditing Standards (Revised 2011).
3. A close or immediate family member, who is an employee of the District and is in position to exert significant influence over the subject matter of the work of the IRO regarding the District, pursuant to §A3.06 b. of the United States Government Accountability Office Government Auditing Standards (Revised 2011).
4. A "familiarity threat," which would threaten any aspect of the relationship with management or personnel of the audited entity, such as a close or long relationship, or that of an immediate or close family member, which will lead the auditor to take a position that is not objective, pursuant to § 3.14 d. United States Government Accountability Office Government Auditing Standards (Revised 2011).
5. Accepted a gift or preferential treatment from the District, creating a "familiarity threat," pursuant to §A3.06 d. of the United States Government Accountability Office Government Auditing Standards (Revised 2011).
6. A long association with the District, pursuant to §A3.06 e. of the United States Government Accountability Office Government Auditing Standards (Revised 2011).
7. Any other relationship with the District, which impairs that IRO engagement member's ability to maintain independence and objectivity as required by the United States Government Accountability Office Government Auditing Standards (Revised 2011).

This certification has been executed and delivered on this date.

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, PC

By: 

J. Scott Newton

Dated: November 15, 2018



EXHIBIT A

BAKER DONELSON

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October 17, 2018

Via electronic mail

The Honorable Nancy Gregoire
Broward Health Board of Commissioners
Chair, Compliance and Ethics Committee
Chair, Legal Committee
Broward Health
1800 NW 49th Street
Fort Lauderdale, FL 33309
ngregoire@browardhealth.org

Dear Commissioner Gregoire:

As the Independent Review Organization ("IRO") working under the August 31, 2015 Corporate Integrity Agreement ("CIA") by and between the United States Department of Health and Human Services Office of Inspector General ("OIG") Office of Counsel to the Inspector General ("OCIG") and Broward Health ("BH" or "NBHD"), we are writing to you as the Chair of BH's Compliance and Ethics Committee and BH's Legal Committee, to advise you that recent individual actions, statements, and recommendations of BH Commissioner Andrew Klein pose potential threats to our independence. The IRO's July 23, 2018 "Report on Consulting Arrangements" ("Report") found that five BH contractual arrangements, several of which regarded CEO and senior staff compensation, "failed to comply with CIA-required systems, policies, processes and procedures for initiating Arrangements and for the internal review and approval of Arrangements as required by the CIA."¹ The Report implicates Commissioner Klein for his failing, as the sole Board-designee, to negotiate the CEO's contract, failing to provide a third party compensation report regarding CEO pay he possessed to other members of the Board of Commissioners, and the "highly unusual" act of the now terminated Senior Vice President of Human Resources sharing "Talking Points" with Commissioner Klein the day before the Board meeting.² With regard to the compensation report, Commissioner Klein knew or should have known that representations that it was a "Fair Market Value" analysis was incorrect.

¹ IRO's Report on Consulting Arrangements," July 23, 2018, p. 2.

² IRO's Report on Consulting Arrangements," July 23, 2018, p. 11-12.

Since the issuance of the IRO's Report and continuing upon BH engaging outside counsel to conduct a supplemental review of it, the actions, statements, and recommendations of Commissioner Klein have not only attempted to obstruct and discredit the work of the IRO, but restrict the ability of BH to investigate and take mandatory corrective action as required by the CIA. Commissioner Klein has also acted individually in undertaking retaliatory efforts to have outside counsel, which was engaged to complete an investigation of the matters addressed in the IRO's Report and issue a supplemental report, cease its work.³ The matters being reviewed by the outside counsel presumably includes Commissioner Klein's conduct, which would raise the issue of whether Commissioner Klein has and continues to act to protect his personal interests, rather than in accordance with his fiduciary duties as a member of the BH Board of Commissioners. In fact, Jesse Diner with the law firm of Buchanan, Ingersoll and Rooney, BH's local outside counsel, wrote a letter to Commissioner Klein warning him of potential violations of Florida law where Commissioner Klein acted individually and without the authority of the Board. *See Exhibit A.* Moreover, Commissioner Klein has undertaken retaliatory action against the members of BH's senior management, who are primarily responsible for promoting compliance under the CIA. It seems apparent Commissioner Klein, acting individually, has disregarded the obvious irreconcilability of being implicated in the IRO's Report while undertaking efforts and using his public position to obstruct and discredit it and simultaneously, preventing the issuance of a supplemental report aimed at promoting corrective action and if necessary, disclosing Reportable Events to the OIG.

As to the BH Board of Commissioners only, the IRO recognizes that Commissioner Klein has and continues to act individually with the exception of one of his recommendations, which was adopted by formal action of the BH Board of Commissioners. There is no legal authority for the one adopted Board action as should have been clear with a cursory reading of the CIA and as was suggested by some of the Commissioners at the September 26, 2018 Board meeting.

Most importantly, we are compelled to caution the Board of Commissioners of the seriousness of Commissioner Klein's conduct as it relates to BH's obligations and the IRO's independent reviews required under the CIA. In addition to placing BH at risk for violation of specific terms of the CIA, the actions, statements and recommendations of Commissioner Klein discussed below, if acted upon by the Board of Commissioners and/or senior management, would result in substantive threats to our CIA-imposed duty of independence.

I. Guidance Regarding Improper Interference and Influence of the IRO's Work

The CIA requires that the "IRO must perform the Arrangements Review in a professionally independent and objective fashion, as defined in the most recent Government Auditing Standards issued by the United States Government Accountability Office" ("GAO").⁴

³ BH's outside legal counsel wrote Commissioner Klein on or about September 21, 2018 warning him of potential violation of Florida law regarding the attempt to have outside counsel cease the investigation.

⁴ CIA, p. 41.

The Generally Accepted Government Auditing Standards ("GAGAS") give examples of circumstances that create undue influence threats for an auditor or audit organization. The following GAGAS stated circumstances are applicable to Klein's actions, statements, and recommendations:

- a. External interference or influence that could improperly limit or modify the scope of an audit or threaten to do so, including exerting pressure to inappropriately reduce the extent of work performed in order to reduce costs or fees.
- b. External interference with the selection or application of audit procedures or in the selection of transactions to be examined.
- f. Authority to overrule or to inappropriately influence the auditors' judgment as to the appropriate content of the report.
- g. Threat of replacing the auditors over a disagreement with the contents of an auditors' report, the auditors' conclusions, or the application of an accounting principle or other criteria.
- h. Influences that jeopardize the auditors' continued employment for reasons other than incompetence, misconduct, or the need for audits....⁵

Under the GAO GAGAS, the IRO is required to evaluate these circumstances for threats to its independence, determine if there are any threats which are significant and identify and apply safeguards to eliminate or reduce threats to an acceptable level. As required by GAGAS, we have identified Commissioner Klein's actions, statements, and recommendations as potential threats to our independence. As a result, we intend to guard against his threats and put into place safeguards, so that our independence is not compromised.⁶ The safeguards include our notification to BH, through the BH Compliance and Ethics Committee and BH Legal Committee, that Commissioner Klein's actions, statements and recommendations are inappropriate and must cease as required by the CIA. Set forth below are specific examples of actions, statements and recommendations made by Commissioner Klein, which we have identified as potentially rising to the level of undue influence resulting from external interference or influence.

II. Obstruction of Broward Health's Operational Efforts to Investigate, Take Corrective Action and Report Findings to the OIG Following the Issuance of an IRO Report

The actions, statements, and recommendations of Commissioner Klein and others in BH's senior management taken in response to the IRO's July 23, 2018 "Report on Consulting

⁵ GAGAS §A3.07 a., b., f-h.

⁶ GAGAS §§ 3.22 and 3.23.

Arrangements" threaten our independence because they involve external interference and influence, suggesting an authority to overrule or to inappropriately influence the IRO's judgment as to the appropriate content and findings of the Report. Commissioner Klein, acting in his individual capacity, and others in senior management have undertaken what we believe to be retaliatory actions against the IRO, BH General Counsel ("GC") Lynn Barrett and BH Chief Compliance Officer ("CCO") Nick Hartfield in a manner which appears to directly contradict the BH Charter, By-laws, Code of Conduct, Policies, Procedures and Practices.

Since the issuance of the IRO Report, Commissioner Klein and others have undertaken efforts to systemically and substantively restrict the GC's and CCO's independent ability to conduct investigations, including but not limited to investigations made in response to Compliance disclosures or identification of potential violations of laws or regulations. Under BH Policy #GA-004-233, the GC and CCO are the only BH employees with the authority to conduct investigations. *See* Exhibit B. Commissioner Klein and others in senior management suggested at the September 12, 2018 Board of Commissioners meeting the policy needs to or could be modified.⁷ As set forth below, restricting the investigative authority of the GC and/or CCO would usurp their authority under the CIA and severely hinder the CIA-mandated work of the IRO.

A. Commissioner Klein's Conduct Usurps the Chief Compliance Officer's Authority Under the Corporate Integrity Agreement

Commissioner Klein's actions to restrict investigative authority would usurp the CCO's obligations and duties under the CIA. Specifically, the CIA provides that: "The Disclosure Program shall emphasize a nonretribution, nonretaliation policy, and shall include a reporting mechanism for anonymous communications for which appropriate confidentiality shall be maintained. Upon receipt of a disclosure, the Compliance Officer (or designee) shall gather all relevant information from the disclosing individual. The Compliance Officer (or designee) shall make a preliminary, good faith inquiry into the allegations set forth in every disclosure to ensure that he or she has obtained all of the information necessary *to determine whether a further review should be conducted.* For any disclosure that is sufficiently specific so that it reasonably: (1) *permits a determination of the appropriateness of the alleged improper practice;* and (2) *provides an opportunity for taking corrective action, NBHD shall conduct an internal review of the allegations set forth in the disclosure and ensure that proper follow-up is conducted.*"⁸

B. Commissioner Klein's Conduct Usurps the General Counsel's Authority Under the Corporate Integrity Agreement

Commissioner Klein's actions to restrict investigative authority would also usurp the GC's obligations and duties under the CIA because the analysis of whether a financial agreement constitutes a Reportable Event involving a potential violation of law or regulation is unquestionably a legal one to be addressed exclusively by BH's GC or those subsequently acting

⁷ BH Board of Commissioners Board meeting, September 12, 2018, draft transcript at p. 184, p. 195.

⁸ CIA p. 15-16.

at her request as referenced in the CIA. In relevant part, the CIA provides that a **"Reportable Event' means anything that involves a matter that a reasonable person would consider a probable violation of criminal, civil, or administrative laws applicable to any Federal health care program for which penalties or exclusion may be authorized."**⁹ (Emphasis added). Significantly, the CIA's next section, "Reporting of Reportable Events" specifies that: **"If NBHD determines (after a reasonable opportunity to conduct an appropriate review or investigation of the allegations) through any means that there is a Reportable Event, NBHD shall notify OIG...."**¹⁰ (Emphasis added). Based upon comments made at the September 26, 2018 BH Board of Commissioner's meetings, the engagement of outside counsel to conduct a supplemental "investigation of the allegations" would be "reasonable" and necessary for the GC to do under the CIA.

In approximately November 2016, the CCO and GC implemented an OCIG-recognized operational procedure, whereby specific IRO Reports involving potential Reportable Events would be analyzed. Where potential violations existed, outside counsel has *routinely* been engaged by the GC to investigate the IRO's findings and if necessary, issue a report them to OCIG. The fact that Commissioner Klein's conduct, or lack thereof, was a part of the subject-matter of the IRO Report raises the disturbing appearance that Commissioner Klein could be acting in his self-interest and/or the self-interest of the CEO and other members of senior management named in the IRO Report by attempting to limit outside counsel's review of the matters identified in the Report.

C. Operational Efforts to Usurp the BH Chief Compliance Officer's and BH General Counsel's Authority Under the Corporate Integrity Agreement

BH Chief Executive Officer ("CEO") Beverly Capasso has apparently recently begun to enforce a "policy," which purports to require the GC and CCO to ask for permission from her prior to obtaining or conducting reviews of emails. The "policy" was apparently put into place by then CEO Pauline Grant and then Senior Vice President Doris Peek for apparently the same reasons as here - to limit the independent investigative ability of the GC, conceal now reported alleged misconduct, and obstruct the IRO's work. The unimpeded review of emails is essential to a thorough investigation. The CEO's position would so restrict CCO and/or GC "investigations" to the point of them being significantly compromised.

Commissioner Klein also demanded that the GC produce records of all litigation and investigations. Commissioner Klein's Board meeting comments reflect a mistaken view that responses to IRO reviews are synonymous with internal BH investigations. Requiring the disclosure of pending investigations, particularly from the Compliance or Legal Departments, could compromise confidentiality under Florida law. As set forth in the CIA and as policy, OCIG regards of upmost importance a provider's employees' ability to make confidential disclosures under a Compliance Department's Disclosure program and the subsequent investigation of the disclosure(s). Moreover, by requiring disclosure of pending investigations, it

⁹ CIA p. 19.

¹⁰ CIA p. 19-20.

would place Commissioner Klein into an operational rather than oversight role, which could, as Diner noted in his letter to Commissioner Klein, violate Florida law. The assertions of the IRO with regard to Commissioner Klein's placing himself in an operational role are consistent with the previous positions taken by OCIG Senior Counsel Laura Ellis regarding Board oversight responsibilities. *See* Exhibit C, p. 2. Finally, any such required disclosures could influence, obstruct, and impede the IRO's ability to conduct confidential interviews, obtain complete production and review documents necessary to fulfill the duties required by the CIA.

III. Commissioner Klein's Individual Efforts to Stop the Outside Counsel Investigation

Based upon discussions at BH Board of Commissioner Board and Committee meetings, the IRO is aware that Commissioner Klein, acting individually, called the outside counsel, who was engaged by BH to investigate matters identified in the IRO's Report. According to statements made at the September 26, 2018 BH Legal Committee meeting, during the call Commissioner Klein repeatedly demanded that the outside counsel immediately cease his work.

Upon the recent resignation of the CEO, Commissioner Klein issued a statement to the press, which was reported by the *Sun Sentinel* on October 14, 2018. Speaking as the BH Chairman of the Board of Commissioners, but without any apparent formal Board action or majority vote by the other BH Commissioners authorizing him to do so, Commissioner Klein blamed the CEO's resignation on the GC's engagement of a major Washington law firm (the outside counsel) to investigate allegations of wrongdoing against BH executives identified in the IRO's Report. Commissioner Klein's conduct is evidence of his continued efforts to stop the GC from investigating, or hiring outside counsel to investigate, the matters identified in the IRO's Report and to limit the ability of BH to take corrective action required under the CIA if the investigation were to conclude there are potential Reportable violations of law and/or regulations. As stated, at the September 26, 2018 BH Legal Committee meeting, Diner advised Commissioner Klein, stating: "So, it is clear in your by-laws and the enabling legislation as amended that this board must act as a whole. It certainly has an oversight duty, but oversight is different than management. It cannot micromanage." The outside counsel added, "....one individual cannot act without the authority of the board." It appears Commissioner Klein refuses to accept the limitations of his position as a member of BH Board of Commissioners. In doing so, he continually seems to act individually in his personal interests while using his official capacity.

IV. Commissioner Klein's Lack of Objectivity and Attempts to Discredit the IRO's July 23, 2018 "Report on Consulting Agreements"

Commissioner Klein has repeatedly made unsubstantiated derogatory comments regarding the IRO and its Report. Commissioner Klein's derogatory comments, include among others, characterizing the IRO's Report as a "distraction," "misguided," an "unnecessary distraction," a "huge distraction," a "bad process," a "flawed process" was not "one hundred percent accurate," and noting his "ongoing concerns." The Commissioner's disparagement of the

IRO Report disregards its essential findings that BH senior management utterly failed to follow CIA-mandated processes with five significant Arrangements. The Commissioner's comments ignores the fact that IRO's review of the issues were not discretionary under the CIA. His disparagement also fails to mention, in its aftermath, BH deemed it necessary to terminate two members of senior management and suspend a third employee. The IRO will address the CEO's, COO's, and CFO's "Response" in its upcoming Systems Review Report. What is not lost on the IRO is, among the members of the Board of Commissioners, Commissioner Klein and Commissioner Klein alone has made public derogatory remarks regarding the IRO and its work. What is also not lost on the IRO is, among the members of the Board of Commissioners, Commissioner Klein is also the only member of the Board of Commissioners implicated in the IRO's Report.

Commissioner Klein is quoted in the October 4, 2018 issue of the *Sun Sentinel* that the GC engaged in the "weaponization" of the IRO, using it to attack her bureaucratic enemies, including anyone who questioned legal fees. The newspaper quoted Commissioner Klein as claiming that the CEO's departure was a consequence of these conflicts. The IRO strongly objects to Commissioner Klein's statements. His allegations are blatantly wrong and his statements appear to be meant to diminish and distract from the IRO's findings. Importantly, they are completely inconsistent with the previous written findings of OCIG Senior Counsel and BH Monitor Laura Ellis regarding the IRO's qualifications and independence. The IRO independently determined to review the matters identified in its Report when it identified five consulting arrangements which were not processed for initiation, review and approval as required of contracts in clear violation of BH's Compliance and Ethics Policies and Procedures adopted to promote compliance with the CIA. Commissioner Klein's use of the press as leverage for his allegations further threatens the IRO's independence.

V. Commissioner Klein's Demand That Information Requested by and Provided to the IRO Must be Given to the BH Board of Commissioners

Commissioner Klein, in demanding that information requested by and provided to the IRO must be given to the BH Board of Commissioners, stated: "So if information is being sent, you know, to the IRO and not being given to the Board, that's got to stop. I mean, we need to know what's going on in our system. And we should be the ones receiving that information, you know, through the Compliance Committee and to the Board directly where necessary. We need to be hearing that information so that we could take action and we can set the policies that need to be set."¹¹

Commissioner Klein's direction is an effort to exercise operational control of not only investigations, but responses to the IRO. The IRO is concerned that his instructions could cause materials requested by the IRO to have their confidentiality compromised under Florida law. If it occurred, it could have a chilling effect on our ability to conduct confidential interviews as well as obtain and review the complete and accurate production of records. In doing so, his

¹¹ BH Board of Commissioners Board meeting, September 12, 2018, draft transcript at p. 172.

actions could be construed as being in violation of the CIA, the BH Charter, Code of Conduct, Bylaws, Policies, Procedures and Practices, and Florida law.

Commissioner Klein and others in senior management criticized the GC and CCO for failing to provide them immediate notice when they became aware that the IRO was conducting a review of consulting arrangements, particularly with regard to the IRO's initial document request, and conducting interviews. His criticism is misplaced and creates an appearance that he would have become involved, in contradiction of the CIA and potentially Florida law, in the operational response process.

VI. Commissioner Klein's Inappropriate Demand That the IRO Preserve Documents for BH

Commissioner Klein subsequently made a demand himself on the IRO to produce a "log" of documents used to prepare the July 23, 2018 "Report on Consulting Agreements" at the BH Legal Committee meeting on September 26, 2018, citing his "ongoing concerns." There is no legal authority for the demand. He stated at the BH Legal Committee meeting: "So at this point, I mean, what I would like to do is suggest that the board request that **the IRO produce a log for us on the communications that preceded the issuance of the IRO report** so we know what information went into that report, **to determine what was presented and by whom and when**."¹² Again, Commissioner Klein's demands are a retaliatory threat to our independence.

Later that day, at the BH Board meeting, he moved and oversaw the vote of the BH Board of Commissioners to demand that the IRO retain documents to prevent "dissipation," which he noted was common in litigation. Commissioner Klein, in demanding that the IRO be required to preserve documents in case a demand was issued for them by BH, stated at the Board meeting: "**It's basic practice that when you're in a manner (sic) that may be contested or is contested, that first thing you do is you preserve the material.** And I just want to make sure that all available information to available to this board as we move forward, particularly on an item that appears to be slightly controversial."¹³

The IRO recommends that the BH Chairman of the Board of Commissioners read the CIA, so he can better understand BH's obligations and the IRO's independence under the CIA. Section III. E. 1. b. of the CIA establishes the obligations of **the IRO and BH** for the retention of records **for production to the OIG** as follows:

*Retention of Records. **The IRO and NBHD shall retain and make available to OIG,** upon request, all work papers, supporting documentation, correspondence, and draft reports (those exchanged between the IRO and NBHD) related to the reviews.¹⁴ (Emphasis added).*

¹² BH Legal, September 26, 2018, transcript at p. 75.

¹³ BH Board of Commissioners Board meeting, September 26, 2018, draft transcript at p. 143.

¹⁴ CIA, p. 14.

While the IRO is well aware of the CIA requirements regarding document retention for the OIG only, comments even alluding to litigation regarding the IRO by the Chairman of the BH Board of Commissioners are without question a threat to our independence. Similarly, there is no legal authority for the Board's action.

Of further and more significant concern is Commissioner Klein's comments that he wanted "**communications that preceded the issuance of the IRO report**" as part of an effort "**to determine what was presented and by whom and when.**"¹⁵ Commissioner Klein's statements evidence an intent to take retaliatory action against any BH employee who produced records, communicated with or were interviewed by the IRO for its Report. The statement begs the question, why would the BH Chairman of the Board of Commissioners need to know, months after the issuance of the IRO's Report and BH's senior management's written Response, "what was presented and by whom and when?"¹⁶ The answer seems to be that Commissioner Klein is attempting to exercise external interference with the IRO's procedures and in the IRO's selection of transactions examined in the Report in an attempt to overrule the IRO's judgement as to the appropriate content of the Report and in violation of the CIA. The action and statements are more than substantive threats to the IRO's independence. They are an unequivocal threat by the BH Chairman of the Board to anyone who would want to promote compliance at BH, cooperate with nondiscretionary CIA-required IRO reviews, and a direct challenge to the authority of the OIG.

It is inappropriate for the Board of Commissioners to attempt to require the IRO to provide it with information sought as a review is undertaken, including seeking interviews conducted or information and documents requested for review. Involvement by the Board of Commissioners or BH senior management in the process of an ongoing IRO review could result in an attempt by BH to improperly limit or modify the scope of an audit or the selection of transactions to be examined, potentially resulting in a threat to the IRO's independence. The BH Board of Commissioners obviously realize the potential implications even the appearance of interference. The IRO communicates its review findings by the issuance of written reports and correspondence, upon which the BH Board of Commissioners, can if necessary, take appropriate action in its oversight role.

After the vote was taken and with regard to BH, Klein stated that "We are the client, so." The statement obviously reveals a complete misunderstanding of the independent, mandatory, non-discretionary responsibilities of the IRO and the terms of the CIA. It further reflects a misunderstanding of the authority and responsibilities of individual members of the BH Board of Commissioners and BH's senior management, who must certify compliance under penalty of federal felony False Statement, under the CIA.¹⁷ Commissioner Klein's actions and statements are a retaliatory threat to our independence.

¹⁵ BH Legal, September 26, 2018, transcript at p. 75.

¹⁶ The GC and CCO were not included in preparation of the BH Response.

¹⁷ 18 U.S.C. §1001.

VII. Broward Health's Alarming Obstructive and Noncompliant Conduct Since the Beginning of the IRO's Engagement

As set forth below and documented in exhibits to this letter, since the first week our work began and throughout the three years in which we have served as IRO, we have been confronted with serious efforts to obstruct, impede and impair our work. At various times, it has required the direct action of OCIG to force BH to comply with the CIA-mandated process. Regretfully, the actions of Commissioner Klein and members of BH's senior management are an alarming continuation of the obstructive and noncompliant conduct engaged in by many now terminated BH senior management and certain former member(s) of the BH Board of Commissioners.

As stated in the IRO's reports, BH's senior management should establish a "tone at the top" for a culture of compliance and the highest level of integrity. Instead, the IRO has over the last three years identified and addressed the repeated efforts by various individuals in senior management and member(s) of Board of Commissioner to disregard internal controls put in place to protect BH and ensure its compliance with its requirements under the CIA. Instead, the IRO has endured a nationally unprecedented effort to obstruct, impair, and impede its work.

During the September 26, 2018 BH Board meeting, Commissioner's Ure's comments regarding past misconduct he had seen in his three years on the Board, made the IRO realize the importance of making the current BH Board of Commissioners aware of pattern of obstruction and lack of compliance, which has occurred. In the IRO's October 7, 2016 Report on the Arrangements Systems Review for the First Reporting Period, the IRO addressed BH's lack of cooperation, obstructive efforts and threats to the IRO's independence, citing numerous examples. Specifically, the IRO identified and documented BH personnel placing personal interest above those of BH to which a fiduciary duty is owed, usurping the authority of the GC, making inappropriate demands on the IRO to produce its work plan and other documents, deliberately withholding and refusing to produce departmental evaluations, disclosure logs and other documents requested by the IRO. The CCO intentionally, inappropriately, and repeatedly asserted the attorney-client privilege as a reason for failing to produce records in direct violation of the terms of the CIA. The now terminated CEO, CCO, and a Senior Vice President used media leaks and as was shown by the IRO, anonymous false Disclosure Log complaints against the IRO and others in an attempt to discredit the IRO's work. In an intentional effort to conceal a Disclosure Log complaint alleging an AKS violation against the former CEO, the former CCO produced false Disclosure Logs, which were ironically created in the Compliance Department. The CCO also produced never-adopted purported BH Policies and Procedures to intentionally misrepresent to the IRO that the former CCO did not have investigative responsibility for the allegations against the former CEO. The IRO also reported and documented BH personnel obstructing efforts to or failing to investigate compliance complaints regarding Focus Arrangement and matters alleging potential violations of law. *See Exhibit D.* With Commissioner Klein's conduct, the IRO has simply encountered the same BH playbook again. As his predecessors did, Klein and others in senior management have made inappropriate demands of the IRO, threatened our independence, used false anonymous complaints and media

leaks and/or statements to discredit our work, and taken substantive actions to try to obstruct, impede, and impair the IRO's work.

Due to the identified obstructive and noncompliant actions of then-BH senior management, the IRO addressed attempts to impede or improperly influence the independent nature of the IRO's work by establishing safeguards against these attempted threats to independence. In addition, the IRO informed OCIG of BH's conduct and the IRO's efforts to address and resolve these matters. Following an on-site visit by OCIG Senior Counsel Laura Ellis, she advised BH that the IRO was acting within the scope of its engagement under the CIA and insisted BH cooperate with the IRO. In addition, Ellis has on two occasions assessed and confirmed in writing her satisfaction that the IRO possessed the necessary qualifications and independence to perform its work in the manner required under the CIA. *See* Exhibit E.

In the IRO's July 10, 2017 Report for the Second Reporting Period, the IRO addressed the actions of a Senior Vice President in the exercise of her authority to effect management overrides to obtain approximately \$2.1 million in payments in a year to a vendor under a \$246,000/year "agreement" without following BH's Compliance and Ethics Corporate Integrity Agreement Policies and Procedures applicable to Focus Arrangements, including Policy GA-004-441. The IRO found that the management overrides of BH's Compliance and Ethics CIA Policies and Procedures violated the fundamental principles of the Compliance and Ethics Program, the CIA, and potentially several federal laws. *See* Exhibit F.

As stated herein, during the Third Reporting Period, in its July 23, 2018 "Report on Consulting Agreements," the IRO once again found and addressed attempts of BH senior management to circumvent, as had been done in years past, the requirements of BH's Compliance and Ethics CIA Policies and Procedures with regard to at least five financial arrangements. BH's senior management failed to meet the Focus Arrangements requirements under the CIA, disregarded their individual obligations created by the CIA, and failed to fully respond to the IRO's request for production of documents. *See* Exhibit G.

VIII. Conclusion

Since the issuance of the IRO's July 23, 2018 "Report of Consulting Agreements" and with BH engaging outside counsel to conduct a supplemental review of it, actions, statements and recommendations of Commissioner Klein can only be construed as attempts to obstruct and discredit the work and independence of the IRO and to restrict the ability of BH to investigate and take mandatory corrective action as required by the CIA. He has repeatedly acted in his official capacity as the BH Chairman of the Board of Commissioners to challenge an IRO Report, which implicates him. Commissioner Klein, in concert with others in senior management implicated in the IRO's Report, has obstructed BH's efforts to investigate, take corrective action, and report appropriate findings to the OIG following the issuance of the IRO's Report. He has attempted to usurp the CIA-mandated authority of BH's CCO and GC to conduct investigations and with others in senior management, prevent their review internal emails. By doing so, he has disregarded specific BH Policy and Procedures. Commissioner Klein, acting alone and without BH Board authorization, called and demanded that the outside

law firm engaged to conduct an investigation of the IRO's Report and issue its own supplemental report, cease its work. He has been warned by BH counsel that he could not act individually or without Board authority, but seems to have disregarded those warnings. Despite the limited oversight role the Board has, he has demanded that information requested by and provided to the IRO must be given to the BH Board of Commissioners. While no legal authority existed he demanded that the IRO maintain a document log and subsequently asked the Board to vote to require the IRO to maintain documents due to his "on-going concerns," referencing "litigation." He has, acting alone and without BH Board authorization, issued press releases to the media and made repeated derogatory statements regarding the IRO and its work. In doing so, Commissioner Klein has repeatedly and substantively threatened our independence.

We have not been able to understand the incredible effort that Commissioner Klein and certain members of senior management have undertaken to obstruct and discredit one IRO Report. We anticipated senior management would recognize the failure to comply with the requirements of the CIA, take corrective action, setting the compliance "tone from the top" and move forward. Regretfully, it did not occur and thereafter, serious threats to the IRO's independence have occurred. My law partners, who comprise the other IRO team members, are people of the highest character, integrity and experience. Everything they have done regarding BH has been exercised with independence and judgement using their unmatched qualifications. As a former Special Agent with the Federal Bureau of Investigation and federal prosecutor, I am unaccustomed to having my integrity and work impugned except by individuals, who were desperately trying to prevent the discovery and consequences of their actions. What is certain is the almost three year effort to obstruct, impair and impede our work cannot continue. We ask that the BH Board of Commissioners set the "tone from the top" through its absolutely essential oversight function by promoting compliance for the thousands of dedicated BH employees and patients, who so desperately need the care they provide. By doing so, we are confident that the day will come where the need for government oversight will end.

Sincerely,

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, PC



J. Scott Newton

JSN:llt

cc: Laura E. Ellis
Lynn M. Barrett
Nicholas L. Hartfield



EXHIBIT B

BAKER DONELSON

	A	B	C	D	E	F	G	H	I
	DEPTNAME	EMPLOYEE	LAST_NAME	FIRST_NAME	TITLE	EMAIL_ADDRESS	CERTIFYING EE'S	#	
1	Administration	923486	CAPASSO	BEVERLY	PRESIDENT/CEO	bbcapasso@browardhealth.org	President/Chief Executive Officer	1	
2	General Counsel	920605	BARRETT	LYNN	GENERAL COUNSEL	Lmbarrett@browardhealth.org	GENERAL COUNSEL	2	
3	Internal Audit	919528	CROOKS	NIGEL	SENIOR INTERNAL AUDITOR	Ncrooks@browardhealth.org	Chief Internal Auditor	3	
4	Administration	924499	SMITH	JARED	CHIEF EXECUTIVE OFFICER-CSMC	Jaredsmith@browardhealth.org	Regional Chief Executive Officers, Chief Operating Officers, Chief Financial Officers, and Human Resource Directors	4	
5	Administration	903685	TAYLOR	ALICE	CHIEF EXECUTIVE OFFICER-NBMC	A2taylor@browardhealth.org	Regional Chief Executive Officers, Chief Operating Officers, Chief Financial Officers, and Human Resource Directors	4	
6	Administration	916635	TODD-ATKINSON	SANDRA	CHIEF EXECUTIVE OFFICER-BGMC	Statkinson@browardhealth.org	Regional Chief Executive Officers, Chief Operating Officers, Chief Financial Officers, and Human Resource Directors	4	
7	Administration	924891	WATKINS	JONATHAN	CHIEF EXECUTIVE OFFICER-IPMC		Regional Chief Executive Officers, Chief Operating Officers, Chief Financial Officers, and Human Resource Directors	4	
8	Administration	907765	HAVERICAK	HEATHER	CHIEF OPERATIONS OFFICER-BGMC	Hmiller@browardhealth.org	Regional Chief Executive Officers, Chief Operating Officers, Chief Financial Officers, and Human Resource Directors	5	
9	Administration	923159	LEOPOLD	MICHAEL	CHIEF OPERATIONS OFFICER-CSMC	mleopold@browardhealth.org	Regional Chief Executive Officers, Chief Operating Officers, Chief Financial Officers, and Human Resource Directors	5	
10	Administration	582352	NEWTON	SUSAN	CHIEF OPERATIONS OFFICER-NBMC	Snewton@browardhealth.org	Regional Chief Executive Officers, Chief Operating Officers, Chief Financial Officers, and Human Resource Directors	5	
11	Administration								

Certifying and Sub-Certifying Employees

	A	B	C	D	E	F	G	H	I
12	Administration	924870	REYES	NETONUA	CHIEF OPS & NURSING OFFICER-IP		Regional Chief Executive Officers, Chief Operating Officers, Chief Financial Officers, and Human Resource Directors	5	
13	Administration	924012	RODRIGUEZ JR	ONEL	CHIEF FINANCIAL OFFICER-CS	o1rodriguez@browardhealth.org	Regional Chief Executive Officers, Chief Operating Officers, Chief Financial Officers, and Human Resource Directors	6	
14	Administration	924610	SCHWARZKOPF	PAUL	CHIEF FINANCIAL OFFICER-BGMC	pschwarzkopf@browardhealth.org	Regional Chief Executive Officers, Chief Operating Officers, Chief Financial Officers, and Human Resource Directors	6	
15	Administration	924890	LAYNE	ROMAINE	ASSOCIATE CFO-BHIP		***Not Listed - SubCertifying***	6	
16	Financial Services - Admin	918755	FERNANDEZ	ALEXANDER	VP, FINANCIAL OPERATIONS	Amfernandez@browardhealth.org	***Not Listed - Certifying***	6	
17	Human Resources	924784	JOHN	JANENE	CHIEF HR OFFICER-BHCS	j2john@browardhealth.org	Regional Chief Executive Officers, Chief Operating Officers, Chief Financial Officers, and Human Resource Directors	7	
18	Human Resources	923945	LYEW AYEE	GARY	CHIEF HR OFFICER-BHIP	glyewayee@browardhealth.org	Regional Chief Executive Officers, Chief Operating Officers, Chief Financial Officers, and Human Resource Directors	7	
19	Human Resources	905295	MCDONALD	CARL	CHIEF HR OFFICER-BHN	C2McDonald@browardhealth.org	Regional Chief Executive Officers, Chief Operating Officers, Chief Financial Officers, and Human Resource Directors	7	
20	Human Resources	924430	PAGE	KIERA	CHIEF HR OFFICER-BHMC/BHC	kpage@browardhealth.org	Regional Chief Executive Officers, Chief Operating Officers, Chief Financial Officers, and Human Resource Directors	7	
21	Marketing Support	924292	MOORE	DENISE	VP, CORP COMM & MARKETING	drmoore@browardhealth.org	Senior Vice President, Communications and Marketing	9	
22	Broward Health Foundation	911435	SHUR	TRACI	PRESIDENT, BH FOUNDATION	Tshur@browardhealth.org	President, Broward Health Foundation	10	

Certifying and Sub-Certifying Employees

	A	B	C	D	E	F	G	H	I
23	Governmental Affairs	924504	ARTEAGA	DIANA	VP, GOV RELATIONS & COMM AFFRS	dartega@browardhealth.org	Vice President, Government and Community Relations	11	
24	HR Administration	923983	NYAMORA	PETER	EVP, CHIEF HR OFFICER	pnyamora@browardhealth.org	Senior Vice President, Chief Human Resource Officer	12	
25	Financial Services - Admin	923852	GOLDSMITH	ALAN	EVP, CHIEF FINANCIAL OFFICER	agoldsmith@browardhealth.org	Senior Vice President, Chief Financial Officer	13	
26	COO Administration	924053	SANTORIO	GINO	EVP, CHIEF OPERATING OFFICER	gsantorio@browardhealth.org	Senior Vice President, Chief Operations Officer	14	
27	Phy Practice Admin	924008	CHERRY	BETH	SVP, PHYSICIAN PRACTICES	bcherry@browardhealth.org	Vice President, Physician Services	15	
28	Information Services Admin	916586	DIAZ DIAZ	GI SELA	DIR, INFORMATION TECHNOLOGY	G2diaz@browardhealth.org	***Depends on reporting relationship***	16	
29	Chief Medical Officer	924483	TA	ANDREW	EVP, CHIEF MEDICAL OFFICER	ata@browardhealth.org	Chief Medical Officer	18	
30	DIO Administration	901059	WESTPHAL	DANNY	VP, DESIGNATED INSTITUTIONAL OFF	Dwestphal@browardhealth.org	Vice President, Designated Institutional Office	19	Interim BHN
31	Corporate Compliance	920855	HARTFIELD	NICHOLAS	VP, COMPLIANCE & PRIVACY	Nhartfield@browardhealth.org	Vice President, Corporate Compliance/Chief Compliance and Privacy Officer	20	
32	CDTC-Administration	102300	CALDERON RANDAZZO	ANA	ADMIN, CDTC	ACALDERON@browardhealth.org	***Depends on reporting relationship***	21	Interim CIO
33	Administration	918430	BLOUNT	TIANA	AVP, AMBULATORY OPERATIONS	Tblount@browardhealth.org	***Not Listed - SubCertifying***	22	



EXHIBIT C

BAKER DONELSON



**Independent Review Organization
Arrangement Systems Review of Focus
Arrangements Relating to**

**Broward Health North's Cancer Center,
Hematology and Oncology Services and
Hospice Services**

June 1, 2018

BAKER DONELSON

TABLE OF CONTENTS

I.	SUMMARY OF THE IRO'S FINDINGS	3
A.	HOSPICE REFERRALS	3
B.	PHYSICIAN REDIRECTION OF BROWARD HEALTH NORTH CANCER CENTER OUTPATIENTS	4
II.	DISCUSSION OF FACTS	7
A.	BACKGROUND	7
B.	BROWARD HEALTH EMAILS REGARDING PHYSICIAN REFERRALS..	8
C.	FINANCIAL RELATIONSHIPS WITH HEMATOLOGY AND MEDICAL ONCOLOGY PHYSICIANS	13
D.	PART TIME EMPLOYMENT ARRANGEMENTS ALLOW FOR THE DIVERSION OF BHN PATIENTS TO THE PHYSICIAN'S PRIVATE PRACTICE.....	16
E.	CONFLICT OF INTEREST DISCLOSURES.....	17
F.	VITAS HEALTHCARE CORPORATION OF FLORIDA	18
G.	HOSPICE PATIENT ADMISSIONS	20
III.	ANTI-KICKBACK STATUTE AND STARK LAW OVERVIEW	21
A.	ANTI-KICKBACK STATUTE	21
B.	STARK LAW	25
IV.	IRO FINDINGS AND RECOMMENDATIONS	30
	CERTIFICATION OF INDEPENDENCE	
	EXHIBIT A	
	EXHIBIT B	
	EXHIBIT C	

Pursuant to the Corporate Integrity Agreement (“CIA”) between the United States Department of Health and Human Services Office of Inspector General (“OIG”) and North Broward Hospital District (“Broward Health” or “BH”), dated August 31, 2015, and as part of its continuing Arrangements Systems Review, the Independent Review Organization (“IRO”) has conducted a review of Focus Arrangements between Broward Health and physicians, who are or have been members of Southeast Florida Hematology-Oncology Group, PA (“Group”) and who are or were on the Medical Staff of Broward Health North Medical Center (“Broward Health North” or “BHN”). The review encompasses the IRO’s examination of Focus Arrangements between Broward Health (and/or Broward Health North) and VITAS Healthcare Corporation of Florida (“VITAS”). The IRO presents its findings below.

I. SUMMARY OF THE IRO’S FINDINGS

A. HOSPICE REFERRALS

From March 5, 2008 to October 9, 2008, there was a series of emails with the subject being obtaining part of the Group’s referrals for Broward Health owned and operated Gold Coast Home Health & Hospice (“Gold Coast” or “GC”), which were written by and between the then Broward Health North Chief Executive Officer (“CEO”) Pauline Grant, Gold Coast Administrator [REDACTED], and then BH Vice President of Community Health Services (and [REDACTED]’s boss) Jasmin Shirley. In an October 7, 2008 email regarding the Group’s Dr. [REDACTED], VITAS, and possible financial relationships between them, Grant advised [REDACTED] that GC needed “to develop a positive working relationship with the doctors in the community,” which Grant said “VITAS does very well.” Grant added that “I think GC hospice should adopt a similar marketing strategy.” When repeatedly questioned by the IRO, [REDACTED] never disagreed that Grant inferred that in order for Gold Coast to develop a “positive working relationship with the doctors” that Gold Coast would need to establish a financial relationship with them. Despite the email exchange, there was no significant increase in referrals from the Group to Gold Coast, but as set for in greater detail below, referrals to the VITAS Hospice Unit at Broward Health North substantially increased upon Grant and BHN entering into Part Time Employment Agreements, as defined under the CIA, and other financial arrangements with the Group. The IRO found that BHN had multiple Arrangements, as defined under the CIA, with the Group. The IRO further found these Arrangements were Focus Arrangements, as defined under the CIA. The IRO did not find that the Group’s part time employment contracts with Broward Health North were based upon the volume or value of referrals. While there did not appear to be potential violations of the federal health care laws resulting from the emails seeking referrals to GC, the IRO continued its Focus Arrangement analysis because Grant’s email(s) were contemporaneous with at least two other situations involving alleged kickbacks at Broward Health North, one of which resulted in the filing of a Reportable Event under the CIA.

The IRO then began to review all of the relevant financial arrangements to determine if there was a stacking of Broward Health contracts with the Group’s physicians and whether they generally appeared to be, among other things, beyond Fair Market Value and not Commercially Reasonable. Even though the terms of each of the Focus Arrangements with the Group may fit

in an Anti-Kickback Safe Harbor, the IRO was concerned about the possibility of there being aggregate overpayments made by BHN to the Group because of the number of agreements with the Group. The IRO is aware that the OIG has warned that “stacking” of physician agreements may result in total payments to an individual or group which exceed fair market value or commercially reasonable levels.

In addition, the IRO learned that the Group physicians were paid by VITAS to round on patients in the VITAS Hospice Unit located in Broward Health North. The Broward Health North contract with VITAS and the VITAS payments to the Group's physicians establish an unbroken chain of financial relationships between Broward Health North and the Group's physicians. The BHN Focus Arrangements with the Group, including the Part Time Employment Agreements, Medical Director Agreements and PPUC Agreements, coupled with the VITAS payments made to the Group for call coverage for palliative care patients in the VITAS Hospice Unit at BHN, created a heightened concern that mandated additional review because it created the appearance of what is highly unusual - a potential three party kickback arrangement.

B. PHYSICIAN REDIRECTION OF BROWARD HEALTH NORTH CANCER CENTER OUTPATIENTS

The IRO has serious concerns about the Group redirecting patients seen at the BHN Cancer Center to the Group's practice to receive physician services and outpatient treatment and ancillary services. The OIG has advised in its Special Advisory Bulletin on Contractual Joint Ventures that offering a referring physician the “opportunity” to generate a fee is itself remuneration that may implicate the Anti-Kickback Statute. When interviewed, the Group physicians were consistent in responding to questions that the “choice” of outpatient facilities and clinic treatment locations which the patients were given was primarily based upon the individual physician's brief availability at BHN when compared to the more significant time spent at their private practice office. Additionally, the physicians indicated the facility quality of their private practice was better than BHN. Most compelling to the IRO, however, was the consistency of the physicians' answers that only certain higher reimbursing profitable patients needing ancillary services, like chemotherapy, were given the “choice.” By effectively allowing the Group to provide services to patients in the Group's clinic which BHN's Cancer Center could otherwise provide in its own right, BHN has provided the Group with the opportunity to generate a fee and a profit. The practical effect of these arrangements, viewed in their entirety, is to provide the Group the opportunity to bill insurers and patients for business, which could have otherwise been provided by the BHN Cancer Center.

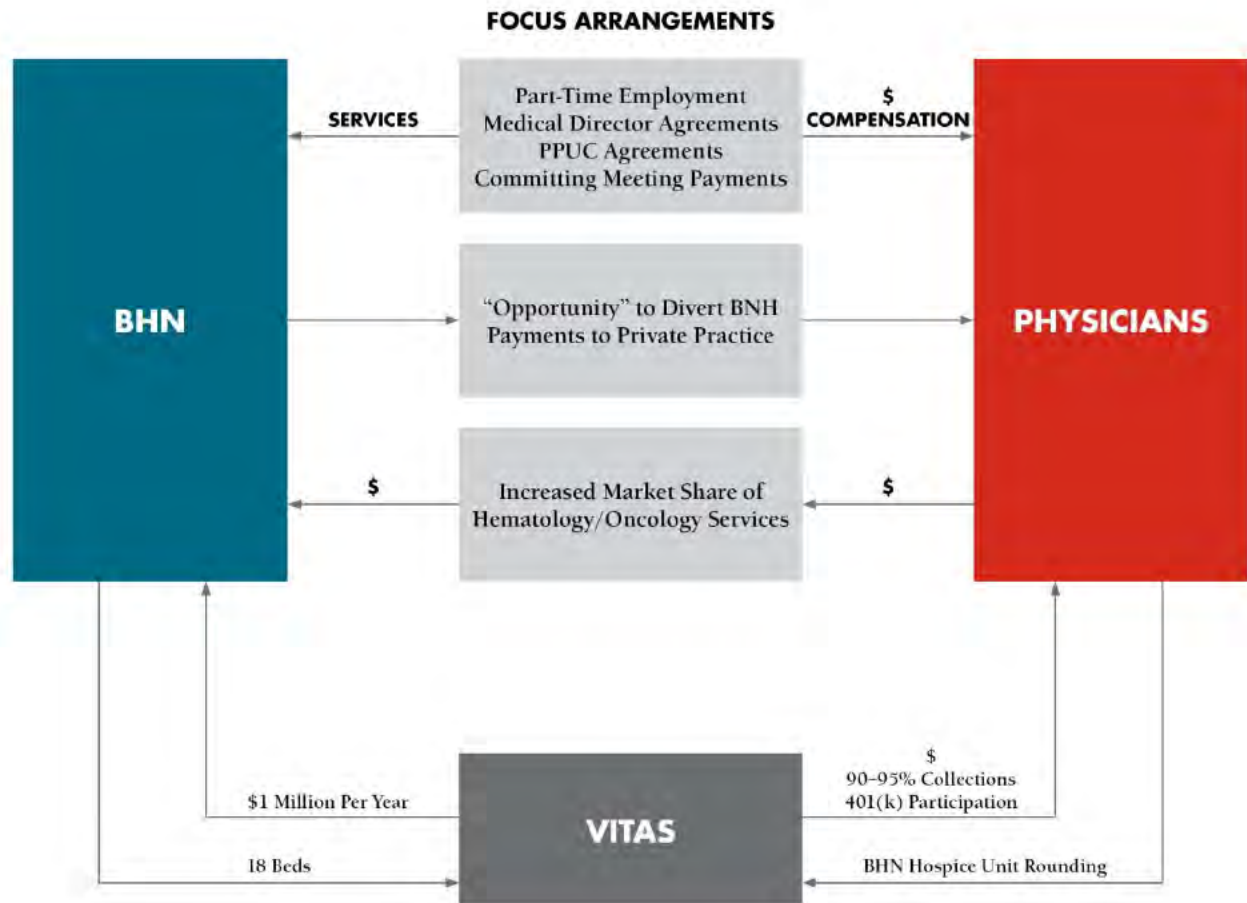
The IRO is disturbed by the physician conduct with regard to what appears to be the poaching of the more lucrative reimbursing patients to render profitable outpatient ancillary services. Moreover, by Grant's authorizing part time employment contracts with the Group, the appearance is created that she allowed the practice to occur as part of a *quid pro quo* in exchange for referrals for other hospital in-patient services, like surgeries and follow up care. The alleged *quid pro quo* also extended to the receipt of the VITAS contract fee. Intentionally allowing the

Group to take the higher reimbursing ancillary service patients away from BHN in order to gain their significant number of lower reimbursing patients referrals appears to implicate the Anti-Kickback Statute and False Claims Act. The matter is more serious when the prior emails regarding obtaining their referrals are considered.

Grant pointed to the strategic plan to justify the need for the Part Time Employment Agreements in order for the physicians to see patients in the BHN Cancer Center. The goals of the BHN strategic plan were dependent on the physicians, who saw patients for evaluation and management, referring these patients to BHN Cancer Center for chemotherapy, radiation therapy or other ancillary services or to BHN for inpatient hospital services. This part of the strategic plan seems to have worked since the market share for hematology/oncology cases grew from 23.8% in 2008 to 38.5% in 2014. In fact, the practice would help explain what is stunning to the IRO and could not be explained by the Group's physicians or others in interviews - how one Full Time Equivalent ("FTE") oncologist from the Group could so dramatically grow the BHN Cancer Center's market share in only a few years.

The alternative appearance is that Grant utterly mismanaged the program, allowing the physicians to poach the most profitable ancillary service patients, negatively impacting BHN's financial position, potentially breaching her fiduciary duties and potentially her obligations under BH's Policies and Procedures. At a minimum, the IRO finds that an environment was created in which BHN purported to compete - but willingly lost - profitable ancillary services to the very Group it was paying to treat its patients.

The below chart reflects the hospice referrals, agreements, and payments, which appear to reflect a potential three party kickback arrangement.



II. DISCUSSION OF FACTS

A. BACKGROUND

Broward Health describes its Cancer Care program as a leader in cancer care offering state-of-the art technology, medical expertise and comprehensive services to residents of Broward County. Broward Health Medical Center and Broward Health North both operate Comprehensive Cancer Centers, which offer access to a wide array of clinical trials, research and leading cancer experts.

Broward Health describes the Broward Health North Comprehensive Cancer Center (the “BHN Cancer Center”) as offering (i) a 128 Multi-Slice CT Scanner to detect cancer and other conditions; (ii) low-dose CT Screening of the lungs to identify lung cancer; (iii) the CyberKnife® Robotic Radiosurgery System to treat tumors as a noninvasive alternative surgery, and (iv) digital mammography for breast examinations. The BHN Cancer Center is operated as an outpatient department of BHN with 12 chairs for chemotherapy infusion. It also offers blood transfusions, iron transfusions, hydration and chemotherapy injections. The BHN Cancer Center is listed as being accredited by the American College of Surgeons and affiliated with the H. Lee Moffitt Cancer Center & Research Institute.

Since at least March 2003, Broward Health has maintained multiple Arrangements with Southeast Florida Hematology-Oncology Group, PA (“Group”) and the individual physicians, who are members of it. The physicians, who have been members of the Group at various times during this period include: [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. Dr. [REDACTED] recently joined the Group.¹ In addition, since 2010 Broward Health has had Arrangements with Dr. [REDACTED], a medical oncologist, who is not a member of the Group. Dr. [REDACTED] is employed by 21st Century Oncology.²

During the review period, Broward Health North strategically maintained and substantially grew its market share for hematology/oncology cases. Documents show that Broward Health North’s executive team tracked the market share of its “High Level Service Line Groups.” The IRO reviewed Broward Health North’s strategic planning documents, which reported that Broward Health North had the largest share of the market in its Primary Service Area for hematology/oncology cases with 23.8% for 2008. By fiscal year 2014, its market share

¹ The IRO, in April 2018, searched Compliance 360 for contracts and contract files for Drs. [REDACTED], and [REDACTED] and found none. Compliance 360 only contained two expired contracts with Dr. [REDACTED], even though he is a current part time employed physician at Broward Health North. While this is admittedly a small sample size, it is apparent to the IRO that Broward Health continues - now for years - to disregard the serious and stunning deficiency of lacking a centralized database for its Focus Arrangements.

² The IRO notes that in conducting this review, it has again become apparent that Broward Health’s system of identifying potential financial conflicts of interest - now for years - has significant deficiencies. The contract files on Dr. [REDACTED] maintained in Compliance 360, as of April 2018, contain two conflict of interest and disclosure agreements executed by Dr. [REDACTED] in 2017 and neither identifies him as an employee of 21st Century Oncology.

for the Hematology/Oncology Service Line was reported to have grown to 38.5% and the documents indicate that it remained the market leader.

Broward Health owns and operates Gold Coast. Gold Coast provides hospice care to patients discharged from Broward Health North and other hospitals and provides inpatient hospice care at Broward Health Medical Center. The then Administrator of Gold Coast [REDACTED] began an email discussion with the then Broward Health North CEO Pauline Grant on March 5, 2008 about the possibility of obtaining patient referrals to Gold Coast for hospice care. Grant suggested that [REDACTED] meet with the then Manager of the Broward Health North Comprehensive Cancer Center [REDACTED] in order to plan and secure a meeting with Dr. [REDACTED] to discuss the possibility of the physicians in the Group “sharing” hospice referrals with Gold Coast. At that time, referrals were almost exclusively being directed by Group physicians to VITAS Healthcare Corporation of Florida. The emails clearly show knowledge by Grant, [REDACTED], and [REDACTED] that the Group was sending its referrals to VITAS.

Since October 23, 2001, Broward Health has had contracts with VITAS to provide inpatient beds and services for VITAS patients, who require inpatient hospice care. VITAS Healthcare Corporation of Florida and Broward Health North entered into an agreement, effective May 18, 2009, to establish a Hospice Unit Agreement in Broward Health North. The VITAS Hospice Unit is located on the third floor of BHN.

Dr. [REDACTED] and Dr. [REDACTED] disclosed on Conflicts of Interest or Financial Disclosure forms submitted to Broward Health that they each have had a compensation relationship with VITAS. Dr. [REDACTED] reported that he worked as Medical Director of VITAS. Dr. [REDACTED] reported he was employed by VITAS. In the course of the IRO’s review, the IRO learned that the other members of the Group also each had a compensation relationship with VITAS. It was reported that Drs. [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] currently have contracts with VITAS to round on VITAS hospice inpatients.³

B. BROWARD HEALTH EMAILS REGARDING PHYSICIAN REFERRALS

The IRO reviewed emails among [REDACTED], Grant, and [REDACTED] sent during a period from March 5, 2008 through October 9, 2008, regarding planning a meeting with Dr. [REDACTED], a physician member of Southeast Florida Hematology-Oncology Group, PA, to discuss the possibility of the physicians in the Group redirecting some hospice referrals to Gold Coast, which at the time were being referred to VITAS.

³ The IRO, in April 2018, reviewed the contract files of Group physicians maintained in Compliance 360. [REDACTED] executed a conflict of interest and financial disclosure in 2014 and did not disclose a financial arrangement with VITAS. [REDACTED] submitted conflict of interest and financial disclosures in 2008 and 2010 and did not disclose a financial arrangement with VITAS.

On March 5, 2008, [REDACTED] emailed Grant, with copy to Jasmin Shirley, the then Vice President of Community Health Services and [REDACTED]'s boss, in which she asked to meet with Dr. [REDACTED]:

to discuss the possibility of sharing his groups hospice referrals between VITAS and us [Gold Coast]. Please advise on what you think the best approach would be.

Grant suggested to [REDACTED] that the best approach would be to call Dr. [REDACTED] and to also discuss with [REDACTED]. On April 3, 2008, [REDACTED] forwarded her email communications with Grant to [REDACTED] and asked her for a time to talk. Responding by email on April 4, 2008, [REDACTED] provided [REDACTED] with the statistics for the Broward Health North Cancer Center referrals to Hospice, which showed that during 2007 the Cancer Center referrals included five (5) patients referred to VITAS and three (3) patients referred to Gold Coast, with the majority of cases being Physician Payment for Uncompensated Care ("PPUC").

In her April 4, 2008 email, [REDACTED] noted that:

most of the patients that get referred to hospice occurs while the patient is inpatient. Also Dr. [REDACTED]'s Group has a private practice that we are not a part of that will refer for hospice.

By email to [REDACTED] on April 4, 2008, [REDACTED] confirmed a phone call with [REDACTED] in which they discussed obtaining patient referrals to Gold Coast. In the email, [REDACTED] stated that:

[a]s we discussed it is really the private practice patients that are hospitalized and then referred to hospice that we would like a chance at. So I will request a meeting with Dr. [REDACTED], me and my marketing person to see if their [sic] is any chance of his sharing some of those referrals.

These emails culminated in the development of an "action plan" to obtain referrals to Gold Coast for hospice services. [REDACTED] sent an email to Grant on October 7, 2008 in which she described the action plan. In the email, [REDACTED] wrote to Grant:

We need your help or input on the issue regarding the physicians at NBMC (in addition to the Oncology group) which we believe are financially tied to VITAS. They provide a continuous stream of referrals to VITAS. Corporate Compliance is aware of this and Patient Choice may be an issue. At your convenience I would like to discuss this with you, as it is a big obstacle to receiving a chance at a referral. I know it is a sensitive issue. Thanks for your support. (Emphasis added)

Grant responded:

The actions you outlined represent a great start...I request that Christine work very closely with Susan Barrow the nurse manager for the hospice unit to implement.

Linda in the past we have met with Dr. [REDACTED] Medical Oncologist and he has been positive about referring patients to the hospice unit, *he may or may not have a financial relationship with VITAS, however, I have no control over that. I really believe the answer is for GC [Gold Coast] to develop a positive working relationship with the doctors in the community. That I hate to say is what VITAS does very well.* For example I went to visit an internal medicine doctor today and in his office he had a framed certificate from VITAS thanking him for the association with them... I think GC hospice should adopt a similar marketing strategy as one example.... (Emphasis added)

In response, [REDACTED] emailed Grant:

Thank You Pauline

We will certainly do our best and greatly appreciate your support. *As far as what other hospices do in terms of physician relationships I would prefer to discuss on the phone or in person with you. Some of their approaches and relationships are impossible for us to compete with (2 of their past marketers are working with Gold Coast now, with first-hand experience), but I can promise, we will do our best within our windows of opportunity.* (Emphasis added)

The email communications between Grant and [REDACTED] ended on October 9, 2008 with Grant suggesting that she and [REDACTED] meet and directing her administrative assistant Yvonne Spence to give [REDACTED] a date for the meeting. When questioned about the above described emails, [REDACTED] reported that VITAS had financial relationships with physicians in place for years. When repeatedly questioned, [REDACTED] never disagreed that Grant inferred that in order for Gold Coast to develop a “positive working relationship with the doctors” that Gold Coast would need to establish a financial relationship with the physicians. [REDACTED] added, however, that despite the inferences suggested in Grant's email to her, Grant knew or should have known [REDACTED] would not participate in the payment of remuneration for referrals.

As described above, VITAS contracts with the physicians in the Group and other physicians in the community to round on its hospice inpatients. [REDACTED] stated that Gold Coast did not pay for oncologists to round on hospice inpatients. It only paid its Medical Director who, as a part of his or her duties, rounds on hospice inpatients. [REDACTED] stated that Gold Coast was not able to compete against VITAS, adding that there was no way Gold Coast could build relationships with physicians in the same manner as done by VITAS. Also, once VITAS took over the 18 bed hospice unit at BHN, the playing field for hospice inpatient care was not level.

In fact, Gold Coast had to contract with VITAS to lease a bed per hospice inpatient stay. When asked by the IRO, neither Dr. [REDACTED] nor [REDACTED], understood the necessity of hematologists-oncologists rounding on palliative care hospice patients. The IRO will leave it for others to determine if VITAS contracting with the Group to do so is medically reasonable and necessary.

Also of interest is an October 7, 2008 email from Broward Health Department of Compliance and Ethics Compliance Auditor Gerald “Jerry” Salamone, in which he notified Broward Health Case Management Directors and Medical Staff Office Directors that a letter was sent to Dr. [REDACTED] as a result of Compliance Intake #443 regarding his Hospice referral practices. The complaint was lodged by a Gold Coast employee about Dr. [REDACTED]’s “undo persuasion” in steering patients to VITAS instead of the Gold Coast hospice. It was alleged that the Dr. [REDACTED] would tell patients that he cannot follow them unless it is at VITAS. Dr. [REDACTED] told the IRO that he does not remember ever receiving a letter from Compliance making the allegations.

Copies of these emails are attached as Exhibit A.⁴

Dr. [REDACTED] told the IRO that he had no recollection of Grant meeting with him regarding hospice referrals. He said that Grant never asked him to direct hospice referrals to Gold Coast, even though he occasionally met with Grant about cancer center business. [REDACTED] said that it is possible that Grant may have asked [REDACTED] about Gold Coast referrals “in passing.”

The language used in these emails involve solicitations for referrals of individuals for federal healthcare program services. As a result, any Arrangement Broward Health North had with Southeast Florida Hematology Oncology Group, PA (or its physicians) and/or VITAS Healthcare Corporation of Florida could implicate the Anti-Kickback Statute,⁵ which prohibits soliciting, receiving, offering or paying any remuneration (including any kickbacks, rebates or bribes) in return for referrals of individuals for federal healthcare program services. If one purpose of an Arrangement is to compensate the Group or its physicians and/or VITAS for past or future referrals of federal health care business, the Arrangement may violate the Anti-Kickback Statute. In turn, if the solicitations violate the Anti-Kickback Statute they would result in violations of the False Claims Act.⁶

Because of the existence of these emails, the IRO reviewed financial relationships, which Broward Health and/or Broward Health North had with the Group and its physicians before 2008 and to date and also reviewed financial relationships between Broward Health, Broward Health North and VITAS. In the course of review, the IRO found that Dr. [REDACTED], who as stated is

⁴ The IRO also reviewed emails sent in May 2008 between and among Grant, Dr. [REDACTED] and Morris in which Dr. [REDACTED] presented a proposal to Grant to provide Head and Neck Cancer Surgery at Broward Health North. Grant responded to Dr. [REDACTED] that she wanted to keep the surgeries at Broward Health North, and that she would pursue an amendment of the contract to increase the amount to pay for these surgeries. Grant then asked [REDACTED] to meet with Dr. [REDACTED] and work out logistics of setting up the referrals for those patients requiring those surgeries. Copies of these emails are included in Exhibit A.

⁵ 42 U.S.C. §1320a-7b(b)

⁶ 31 U.S.C. §§ 3729 - 3733

not a member of the Group, also had financial relationships with Broward Health North, including a Part Time Employment Agreement to furnish professional services in the BHN Cancer Center.

The IRO does not have access to information of the Group and its physicians or VITAS in order to review financial relationships between the Group, or its physicians and VITAS. However, two physicians of the Group identified the existence of financial relationships with VITAS in disclosures under Conflict of Interest and Financial Disclosure filings submitted to Broward Health and it was reported to the IRO by interviewees that these two physicians, along with the other physicians in the Group each have a financial relationship with VITAS to round on VITAS hospice inpatients. When questioned by the IRO, Dr. [REDACTED] explained that, on a weekly basis, he receives a written list of patients to be seen once a week from VITAS. After the visits are made, he bills from one of the following codes:

- 1) 99223 initial hospital care (involving a 20-25 minute high level initial visit)
- 2) 99231 subsequent hospital care (where nothing significant occurs)
- 3) 99232 subsequent hospital care (involving a 7-10 minute follow up visit)
- 4) 99233 subsequent hospital care (involving a 10 minute time increment in which something “exceptional” happens. Dr. [REDACTED] described this as being a “rare code,” indicating he only used it about 10% of the time.)⁷

While Dr. [REDACTED] stated he has not seen a recent contract between the Group and VITAS, he stated that he understood that VITAS received between 5-10% of the billing code reimbursement with the Group physicians receiving the remaining 90-95%. He noted that for years the Group was allowed to participate in the VITAS 401(k) plan with a 2% match, but it was taken out of the last contract. As addressed under the Stark Law discussion of this Report, the United States Department of Justice raised concerns in the Tuomey case that part of the compensation paid by Tuomey to its part-time physician employees included the provision of full-time benefits. We leave it to others to consider whether the same concerns would be raised in an Anti-kickback Statute analysis of the extension of 401(k) benefits by VITAS to the Group physicians as part of the VITAS financial arrangements with the Group physicians.

⁷ Comments made by Dr. [REDACTED] describing the physician evaluation and management services furnished under these CPT Codes are placed in parentheses. The IRO reviewed the 2018 Current Procedural Coding Expert published by Optum360 and found that Dr. [REDACTED]'s descriptions of time typically spent with the patient and or family or caregiver varies from the CPT descriptions.

C. FINANCIAL RELATIONSHIPS WITH HEMATOLOGY AND MEDICAL ONCOLOGY PHYSICIANS

Since at least March 31 2003, Broward Health has had multiple and continuing Arrangements with Southeast Florida Hematology-Oncology Group, PA and the individual physicians, who are members of the Group. The Arrangements meet the definition of Focus Arrangements set forth in the CIA. Specifically, the Group contracted with Broward Health North under a Physician Payment for Uncompensated Care Agreement (“PPUC Agreement”) to provide hematology/oncology services for Broward Health North inpatients and outpatients, who qualify for inclusion in the Broward Health PPUC Program. Qualified patients also included those referred via the established referral mechanism to Broward Health North, those referred from Primary Care Clinics or Satellite Facilities operated by Broward Health North, and patients presenting to the Emergency/Trauma Services Department of Broward Health North, who qualify for financial classifications established by Broward Health as Private Pay and Qualified Tax Funds. The PPUC Agreement was amended in 2004, 2005, 2007 and 2010 to increase the compensation payable under the agreement. In a memo dated August 31, 2009, Grant requested approval to expand the 2007 Agreement with Southeast Florida Hematology/Oncology Group to include coverage for consultations to compensated trauma patients. Approximately two years ago the term of the PPUC expired and BHN did not renew the PPUC Agreement with the physician members of the Group.

Dr. [REDACTED] has a current PPUC contract with Broward Health to provide Specialist Services and Follow-up Care for Hematology and Oncology at Broward Health Coral Springs. The contract was effective May 19, 2017 and has a one year term. Also, Dr. [REDACTED] disclosed in an April 2015 Disclosure Statement that he had a PPUC Agreement with Broward Health Coral Springs, but the agreement is not in Compliance 360. He also executed a PPUC Hospital Inpatient Fee for Service Agreement in August 2015, which is effective until June 7, 2018. It was reported to the IRO that because the Group’s PPUC Agreement terminated, Dr. [REDACTED] now sees all BHN PPUC inpatients needing hematology and oncology services.

Since at least 2003, upon becoming a member of the Group, each physician accepted a Part Time Employment Agreement with Broward Health North to perform clinical services in the medical specialty of hematology/oncology. In addition, Dr. [REDACTED] signed a similar part-time Employment Agreement effective July 1, 2010, which over the years has been renewed and amended in the same manner as the part-time Employment Agreement with the individual physicians in the Group.

Provisions of the 2003 Part Time Employment Agreement state that Broward Health anticipates utilizing the physician’s services at the “Physician’s office” currently in the Cancer Center at North Broward Medical Center located at 201 E. Sample Road, Pompano Beach, Florida. The Physician’s office is referred to as the “District Office Practice” in the Agreement. The physician is expected to practice medicine in the medical specialty of hematology/oncology in the District Office Practice. Additional duties to be performed include participating in the development of patient relationships, recruitment of additional physicians, provision of

administrative assistance, and involvement in academic programs. Hourly compensation was to be paid bi-weekly upon submission of completed Activity Reports.

Under the 2003 Part Time Employment Agreement, the individual contracting physician, in conjunction with additional physicians designated by Broward Health, contracted to work a maximum of twenty (20) hours per week at a rate of \$160 per hour. As new physicians were added, the hours to be worked per week under the Part Time Employment Agreements were increased. The hourly rate increased to \$180 per hour on March 1, 2005 and stayed at that rate until it was increased to \$200 per hour in March 2016. Periodic increases in hours to be worked resulted in increased annual compensation. The compensation under the Part Time Employment Agreement in place from 2005 to 2007 was \$282,129. In March 2007, the compensation was increased to \$336,960 under a three (3) year contract, but it was again increased by amendment on September 1, 2008 to \$374,000 (maximum of 40 hours per week at \$180 per hour). In 2013 the cap was raised to \$383,760 based on 41 hours per week at \$180 per hour. The 2016 Part Time Employment Agreement required the physicians to provide on-site clinical services at the Cancer Center an average of and up to forty-one (41) hours per week at \$200 per hour resulting in an annual compensation capped at \$426,400. Broward Health was responsible for billing and collecting from patients and third party payors for services performed by the physicians under the Part Time Employment Agreements.

Among the physicians in the Group, Dr. [REDACTED] has served as Medical Director of the Physician Patient Experience Committee and Dr. [REDACTED] has served as Medical Director of the Comprehensive Cancer Center. Dr. [REDACTED] disclosed in a disclosure statement dated May 2017 that he served as a Medical Director at BHN.⁸ In addition, Dr. [REDACTED], Dr. [REDACTED] and Dr. [REDACTED] were paid to attend Medical Staff Committee meetings under a Medical Staff Agreement for Meeting Attendance at Committee Meetings.

Each Arrangement reviewed by the IRO meets the definition of a Focus Arrangement under the CIA.⁹ The Focus Arrangements between Broward Health and/or Broward Health North and the Group and/or its physicians, and Dr. [REDACTED], which were reviewed by the IRO, are set forth on **Exhibit B**.

⁸ The IRO did not find this medical director agreement in Compliance 360.

⁹ The Group physicians may have also served as principle investigators for clinical trials sponsored by BH or BHN. The IRO did not consider clinical trial agreements for this review.

The IRO reviewed a Physician Services Contract Request Form, dated February 5, 2010, completed by Grant in connection with the Employment Agreements with [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. Grant, in describing the reasons for the Part Time Employment Agreements wrote:

- North Broward has largest share of market in its Primary Service Area for hematology/oncology cases with 23.8% for 2008
- Hematology/oncology services for the Cancer Center are essential . . . to support the continued growth for our Cancer Program.
- Providing high quality, timely hematology/oncology services for patients of the Comprehensive Cancer Center and trauma patients supports the objective of increasing the market share for selective services at NBMC.

Grant completed a Physician Services Contract Request Form, dated January 7, 2010, submitted for the renewal of an Agreement with Dr. [REDACTED] as Medical Director of Comprehensive Cancer Center in which Grant wrote:

- North Broward has largest share of market in its Primary Service Area for Hematology/oncology cases with 23.8% for 2008
- Hematology/Oncology services for our Cancer Center are essential in order to increase our market share

An Inpatient Market Share Trends FY 2010-2014 Report, prepared April 17, 2015, which was used by Broward Health North for strategic planning purposes identified hematology/oncology as the highest service in the category of “High Level Service Line Groups.” The Report noted that as of Fiscal Year 2014 its market share for the hematology/oncology service line was 38.5%.

Documents reflect that the development and growth of the hematology/oncology service line was extremely important to Grant and a central part of BHN's strategic plan. The hematology/oncology service line encompasses both the hospital inpatient care and hospital outpatient departments and ancillary services. Grant pointed to the strategic plan to justify the need for the Part Time Employment Agreements in order for the physicians to see patients in the BHN Cancer Center. The goals of the strategic plan are dependent on the physicians, who see patients for evaluation and management referring these patients to BHN Cancer Center for chemotherapy, radiation therapy or other ancillary services or to BHN for inpatient hospital services. This part of the strategic plan seems to have worked since the market share for hematology/oncology cases grew from 23.8% in 2008 to 38.5% in 2014. The IRO leaves it to others to determine whether it was commercially reasonable and necessary to employ physicians part time to provide professional services in the BHN Cancer Center, instead of relying on physicians on the Medical Staff of BHN to see patients in their private practice and then refer them to BHN Cancer Center for treatment.

The Medical Director Agreement of Dr. [REDACTED] was justified by BHN because it was required in order for the BHN Cancer Center program to be accredited. Recently, the new management at Broward Health eliminated the costly BHN Cancer Center program accreditation and terminated the Medical Director Agreement as no longer needed. Interviewees stated that the agreement for Dr. [REDACTED] to serve as Medical Director of the Physician Patient Experience Committee, which was an initiative undertaken during Grant's tenure, was terminated and has not been replaced, raising questions about whether it was necessary and needed.

D. PART TIME EMPLOYMENT ARRANGEMENTS ALLOW FOR THE DIVERSION OF BHN PATIENTS TO THE PHYSICIAN'S PRIVATE PRACTICE

Interviewees confirmed that none of the Group physicians' private practice patients are seen in the District Office Practice of BHN located in the Cancer Center. Through interviews, the IRO learned that the Group physicians do not accept PPUC patients in their private office and do not see PPUC hospital inpatients. Moreover, interviews clearly and consistently indicated the Group does not see non-profitable, lower reimbursing patients from BHN at their private office. When a BHN Cancer Center patient becomes a BHN hospital patient, the Group physician treats the patient in the hospital (as long as the patient is not a PPUC patient) and the Group bills for the professional service. However, the Group does not round on or treat PPUC hospital inpatients. In its private practice, the Group offers chemotherapy services and has 12-14 chemotherapy chairs. By comparison, the BHN Cancer Center has 12 chemotherapy chairs. The Group's private practice takes Medicare, Medicaid and some, but not all, private insurance. The BHN Cancer Center is located in a different geographic location from the Group's private clinic.

Dr. [REDACTED] was in private practice when he initially entered the Part Time Employment Agreement with BHN. Dr. [REDACTED] is an employee of 21st Century Oncology. As noted above, Dr. [REDACTED] has a current PPUC Hospital Inpatient Fee for Service Agreement under which he furnishes professional services to all PPUC inpatients needing hematology and oncology services at BHN.

Of interest to the IRO is whether a part time employed physician - particularly a Group physician - seeing patients at the BHN Cancer Center could also see and treat those patients in the physician's private practice clinic. When an individual is initially seen by the part time employed physician at the BHN Cancer Center, the physician evaluates and diagnoses the individual's condition and, where appropriate, the physician develops a treatment plan. The physicians interviewed reported that the patient is given the choice or option as to whether to receive the recommended treatment at the BHN Cancer Center or at the Group's private clinic. However, a patient may decide to take treatment at the Group's private clinic because it is closer to the patient's home and more convenient. This choice is only available to the patients whom the Group will take: those who are beneficiaries of Medicare, Medicaid and some private insurance. No indigent or PPUC patients are given the option to be treated at the Group's private clinic.

The IRO requested Broward Health furnish it a listing of BHN Cancer Center patients with private insurance coverage who were seen on only one encounter. A review of this listing shows numerous patients with one encounter. In the listing, the patients are identified by payor category, including Medicare, Medicaid and private insurance beneficiaries. None are identified as having no insurance or being a PPUC patient. When interviewed, the Group physicians were consistent in responding to questions that the “choice” the patients were given was primarily based upon the individual physician's brief availability at BHN when compared to the significantly greater amount of time spent at their private practice office. Additionally, the physicians indicated the facility quality of their private practice was better than BHN. Most compelling to the IRO, however, was the consistency of the physicians' answers that only certain higher reimbursing profitable patients needing ancillary services, like chemotherapy, were given the “choice.”

While the IRO is disturbed by the physician conduct with regard to what appears to be the poaching of the more lucrative patients to render profitable ancillary services, it certainly raises concerns as it relates to the conduct of Grant and implications for BH. By Grant authorizing part-time employment contracts with the Group, the appearance is created that she allowed the practice to occur as part of a *quid pro quo* implicating the Anti-Kickback Statute and False Claims Act by intentionally allowing the Group to take the higher reimbursing ancillary service patients away from BHN in order to gain their significant number of lower reimbursing patients referrals. The matter is more serious when the prior emails regarding obtaining their referrals are considered. In fact, the practice would help explain what is stunning to the IRO and could not be explained by the Group's physicians or others in interviews - how one Full Time Equivalent (“FTE”) oncologist from the Group could so dramatically grow the BHN Cancer Center's market share in only a few years.

The alternative appearance is that Grant utterly mismanaged the program, allowing the physicians to poach the most profitable ancillary service patients, negatively impacting BHN financial position, potentially breaching her fiduciary duties and potentially her obligations under BH's Policies and Procedures. At a minimum, the IRO finds that an environment was created in which BHN had to compete - and willingly lost - for profitable ancillary services to the very Group it was paying to treat its patients.

E. CONFLICT OF INTEREST DISCLOSURES

The IRO reviewed Conflict of Interest disclosures, which were made to Broward Health by Dr. [REDACTED] and Dr. [REDACTED]. Both of these physicians disclosed that they had a compensation relationship with VITAS. On February 22, 2010, Dr. [REDACTED] disclosed that he had a financial relationship with VITAS. Again, on January 12, 2012, Dr. [REDACTED] reported that he was rendering services as a VITAS employee. He also acknowledged and disclosed a compensation relationship with VITAS in 2014 and in 2016. Dr. [REDACTED] reported that he was an employee or independent contract with VITAS on March 25, 2010 and that he was serving as a Medical Director of VITAS on February 2, 2017.

Although, it has been reported to the IRO that the other physicians in the Group have an employment or independent contractor relationship with VITAS, the IRO did not find a Conflict of Interest or Financial Disclosure Statement in the Compliance360 files for these physicians who disclosed a financial relationship with VITAS.¹⁰ Drs. [REDACTED] (2014) and [REDACTED] (2008, 2010) filed conflict of interest and financial disclosures, making no reference to a financial arrangement with VITAS.

F. VITAS HEALTHCARE CORPORATION OF FLORIDA

The IRO found that since October 23, 2001, Broward Health has had a contract (or contracts) with VITAS Healthcare Corporation of Florida to provide inpatient beds and services for VITAS patients, who require inpatient hospice care. VITAS Healthcare Corporation of Florida and North Broward Hospital District entered into a General Inpatient Care Agreement, originally effective October 23, 2001, which was amended on an annual basis to increase the daily rate. The contract covered VITAS' use and access to beds in Broward General Medical Center, North Broward Medical Center ("Broward Health North"), Imperial Point, and Coral Springs. The daily rate was changed from \$600 to \$620 under the Sixth Amendment effective October 24, 2008. The Seventh Amendment of the contract, which was effective October 24, 2009, removed North Broward Medical Center from the terms of the contract. The daily rate was increased from \$620 to \$624 under the Seventh Amendment. This rate applied to Broward General Medical Center, Imperial Point and Coral Springs.

VITAS Healthcare Corporation of Florida and Broward Health North entered into a new Hospice Unit Agreement, effective May 18, 2009 with a five year term. At the time the Hospice Unit of Broward Health North was to have a minimum of 16 beds and the compensation paid by VITAS was \$450 per day. The May 18, 2009 Hospice Unit Agreement was amended November 1, 2011. The Hospice unit was increased to 10,046 square feet and a maximum of 18 beds. Construction improvements were to be made to the Hospice Unit.

A new Agreement for General Inpatient Care between Broward Health and VITAS Healthcare Corporation of Florida, (covering Broward Health Coral Springs, Broward Health North and Broward Health Imperial Point) was entered into effective November 1, 2012. Under this agreement, Vitas paid compensation at the rate of 95% of the Medicare General Hospice Inpatient care rate.

Each Arrangement concerning hospice provider VITAS which was reviewed by the IRO meets the definition of a Focus Arrangement under the CIA. An outline of the Focus Arrangements with VITAS is set forth on Exhibit C.

¹⁰ This may be due in part to the fact that Compliance 360 does not contain all physician contracts. The database, as of April 2018, has no contracts for Drs. [REDACTED] or [REDACTED]. The IRO finds this to be a deficiency in the population and management of Broward's centralized contracts database.

Two of the physicians of the Group, Dr. [REDACTED] and Dr. [REDACTED], disclosed in Conflict of Interest Disclosures submitted to Broward Health that they have had a compensation relationship with VITAS from at least February 22, 2010 through a disclosure made on February 2, 2017. It was reported to the IRO that the other physicians in the Group also have an employment or independent contractor relationship with VITAS and that VITAS also contracts with other physicians in the community.

The financial relationships, which these physicians have with VITAS, are not direct Arrangements with Broward Health. However, there is an unbroken chain of financial relationships which exist between BHN and each of the physicians, who are paid by VITAS to round on VITAS hospital inpatients in the VITAS Hospice Unit located in BHN by virtue of the financial relationship established between VITAS and BHN for the lease of inpatient beds in the VITAS hospice unit at BHN. Accordingly, BHN benefits from rental revenues made possible by referrals made to the VITAS hospice unit by these physicians. The 2008 email exchange discussed above which questions whether physicians are “financially tied to VITAS” in order to ensure the physicians “provide a continuous stream of referrals to VITAS” raises Anti-kickback Statute and Stark Law questions. Recently, VITAS entered into settlements to resolve government lawsuits alleging violations of the False Claims Act and payment of kickbacks in violation of the Anti-kickback Statute.

In 2016, a subsidiary of Chemed Corporation, VITAS Health Corporation Midwest, agreed to pay \$200,000 to settle a civil whistleblower lawsuit alleging it paid kickbacks to oncologist [REDACTED] for referrals to its hospice programs.¹¹ Dr. [REDACTED], an oncologist and former owner of Michigan Hematology and Oncology, pled guilty to health care fraud and is currently serving a 45-year prison sentence.

In addition, in October 2017, the United States Department of Justice announced that Chemed Corporation and several of its wholly-owned subsidiaries, including VITAS Healthcare Corporation of Florida, reached a settlement to pay \$75 Million to resolve a government lawsuit alleging violations of the False Claims Act. The allegations in the complaint covered conduct between 2002 and 2013, a time period which overlaps the time period which is the subject of the IRO’s review. According to the complaint, VITAS, among other things, used aggressive marketing tactics and pressured staff to increase the volume of its hospice claims. As a requirement of the settlement, VITAS Hospice Services, LLC, VITAS Healthcare Corporation, and affiliates including VITAS Healthcare Corporation of Florida, entered into a CIA with the Office of Inspector General of the United States Department of Health and Human Services.

¹¹ In a statement released by VITAS Healthcare, it confirmed that it had reached the \$200,000 settlement with the federal government to resolve claims that it donated money to Dr. [REDACTED]’s cancer charity in exchange for hospice patient referrals, but it denied any wrongdoing. VITAS stated it fully cooperated with the Department of Justice, and decided to settle this case to avoid the expenses associated with the whistle-blower litigation.

By Grant continuing the arrangement with VITAS and in a manner similar to the part time Group contract resulting in the poaching of profitable higher reimbursing ancillary service cancer patients, she further created an environment in which a third-party competed against a BH entity, Gold Coast. By doing so, BH - as a system - was denied the revenue from the in-patients (as opposed to the lease payments). While it may not rise to a violation of law, the IRO finds the practice to be of concern as a managerial issue, whether it resulted in systems deficiencies, and/or breached BH Policies and Procedures. The IRO finds the practice to be another indication of a broken decentralized system, where hospitals become fiefdoms at the expense of the BH System.

G. HOSPICE PATIENT ADMISSIONS

The Gold Coast admissions by the Group physicians during the review period were negligible. Of a total of 4189 admissions to Gold Coast Hospice from January 1, 2008 - November 7, 2017, physicians in the Group were responsible for less than 20 admissions. However, the IRO reviewed an excel spreadsheet showing Broward North Hospice Patient Admissions from July 2008 through December 2012 by referring physician and payor source, including VITAS as a payor under the Inpatient Care and Hospice Unit Agreements. The number of hospice encounters / admissions made under orders of the physicians in the Group more than tripled from 2008 to 2010.

VITAS UNIT HOSPICE INPATIENT ADMISSIONS			
Physician	2008	2009	2010
██████████	21	64	74
██████	15	41	92
██████████	20	54	66
██████	19	60	75
██████████	11	19	5

The increase in hospice admissions occurred contemporaneously with and after the emails among Grant, ██████████ and ██████████ seeking patient referrals to hospice. Interestingly, these are inpatient hospice admissions to VITAS. Referrals to VITAS are not direct referrals to Broward Health North, but did benefit Broward Health North, because VITAS paid Broward Health North a daily rate per bed used in the VITAS Hospice Unit located in Broward Health North.

III. ANTI-KICKBACK STATUTE AND STARK LAW OVERVIEW

A. ANTI-KICKBACK STATUTE

The Anti-Kickback Statute¹² prohibits soliciting, receiving, offering or paying any remuneration (including any kickbacks, rebates or bribes) in return for referrals of individuals for federal healthcare program services. The definition of “remuneration” has been broadly interpreted to include any remuneration, direct or indirect, whether in cash or in-kind and regardless of the amount, that is offered, paid, solicited or received in return for referrals of patients or business for which payment may be made, in whole or in part, under a federal healthcare program such as Medicare or Medicaid. The statute also prohibits the solicitation, receipt, offer or payment of remuneration to anyone to induce them to recommend purchasing, leasing or ordering any good, facility, service or item for which payment may be made in whole or in part by a federal healthcare program.

The scope of the activities prohibited by the Anti-Kickback Statute is broad. Not only does it apply to direct cash payments made in return for referrals, but it has also been found to apply in situations where the receipt of consideration, directly or indirectly, induces a referral. In fact, courts have held that the Anti-Kickback Statute is violated where one purpose of the payment is to induce referrals.

Because of the breadth of the Anti-Kickback Statute and the difficulty in determining whether the parties to an arrangement intended to induce referrals, Congress required HHS to issue regulations identifying practices that are protected from prosecution or punishment even though they may otherwise violate the Anti-Kickback Statute (the “Safe Harbors”). To be protected by a Safe Harbor, a transaction or arrangement must meet all of the requirements of the Safe Harbor. 56 Fed. Reg. 35952, 35954 (July 29, 1991).

In the comments to the 1991 Safe Harbors, the OIG specifically stated that “[t]his regulation does not expand the scope of activities that the statute prohibits. The statute itself describes the scope of illegal activities. The legality of a particular business arrangement must be determined by comparing the particular facts to the prescriptions of the statute.”

Southeast Florida Hematology Oncology Group, PA and its physicians and Dr. [REDACTED], as an independent physician, are sources of health care business or referrals to Broward Health. VITAS Healthcare Corporation of Florida is a source of health care business or referrals to Broward Health and is also a potential recipient of health care business or referrals from Broward Health.¹³ As a result, any Arrangement which Broward Health or Broward Health North may have had with Southeast Florida Hematology Oncology Group, PA (or its

¹² 42 U.S.C. §1320a-7b(b)

¹³ Southeast Florida Hematology Oncology Group, PA and its physicians are a source of health care business or referrals to VITAS Healthcare Corporation of Florida

physicians), Dr. [REDACTED], and/or VITAS Healthcare Corporation of Florida has the potential of implicating the Anti-Kickback Statute.

The determination as to either party's (the payor or the recipient of the payment) compliance with the Anti-Kickback Statute rests on the parties' intent in entering into the proposed arrangement or transaction. Intent will be inferred from testimony and documents relating to the negotiation of the arrangement or the transaction and from the behavior of the parties and persons associated with them as the arrangement is implemented.

As noted in Section I. B. above, emails between Grant, [REDACTED] and [REDACTED] call into question the purpose or intent of Grant and potentially others at Broward Health North as they involve solicitations for referrals of individuals for federal healthcare program services. If one purpose of an Arrangement is to compensate the Group or its physicians, Dr. [REDACTED] and/or VITAS for past or future referrals of Federal health care business, such Arrangement may violate the Anti-Kickback Statute. In turn, if the solicitations violate the Anti-Kickback Statute they would result in violations of the False Claims Act.

In its Supplemental Compliance Program Guidance for Hospitals, the OIG has advised that a hospital may have arrangements with hospitals, hospices, physicians and vendors which are vulnerable for abuse and could lead to a violation of the Anti-Kickback Statute, the Stark physician self-referral law and other relevant Federal and State laws. The OIG explains that for purposes of analyzing an arrangement or practice under the Anti-Kickback Statute, the following two inquiries are useful:

- Does the hospital have any remunerative relationship between itself (or its affiliates or representatives) and persons or entities in a position to generate Federal health care program business for the hospital (or its affiliates) directly or indirectly? Persons or entities in a position to generate Federal health care program business for a hospital include, for example, physicians and other health care professionals, ambulance companies, clinics, hospices, home health agencies, nursing facilities, and other hospitals.
- With respect to any remunerative relationship so identified, could one purpose of the remuneration be to induce or reward the referral or recommendation of business payable in whole or in part by a Federal health care program?¹⁴

In its Work Plan for Fiscal Year 2016, the OIG identified financial arrangements relating to the provision of hospice general inpatient care as also being vulnerable for abuse.¹⁵ When a beneficiary elects hospice care, the hospice agency assumes the responsibility for medical care related to the beneficiary's terminal illness and related conditions. The OIG states that if the hospice inpatient care is provided to patients in a facility other than the hospice's own inpatient facility, there is a potential Anti-Kickback violation. The OIG warns that:

¹⁴ 70 Fed Reg 4858, 4864; January 31, 2015

¹⁵ OIG Work Plan Fiscal Year 2016

.....

If a hospice is promising (or a nursing home or hospital is requesting) that patients will be treated at the general inpatient level of care, this could be viewed as remuneration in exchange for future referrals. A hospice patient receiving general inpatient care in a nursing home or hospital facility will bring the facility more revenue under the contract with the hospice, and could serve to fill otherwise empty beds in the facility. Therefore, the practice could violate the anti-kickback statute.

The OIG advises physicians in its Compliance Program Guidance for Individual and Small Group Physician Practices¹⁶ that arrangements with hospitals, hospices, nursing facilities, home health agencies, durable medical equipment suppliers, pharmaceutical manufacturers and vendors are areas of potential concern under the anti-kickback statute. Included in possible risk factors relating to this risk area that should be addressed in the practice's standards and procedures are:

- Financial arrangements with outside entities to whom the practice may refer Federal health care program business; and
- Consulting contracts or medical directorships¹⁷

The safe harbors for bona fide employment and for personal services and management contracts, 42 C.F.R. §1001.952 (i) and (d), respectively, are potentially applicable.

Although the Anti-Kickback Statute itself contains a specific statutory exception for employees, the safe harbor regulations expanded on this statutory exception. The safe harbor reads as follows:

[r]emuneration does not include any amount paid by an employer to an employee, who has a bona fide employment relationship with the employer, for employment in the furnishing of any item or service for which payment may be made in whole or in part under Medicare or a State health care program.

For purposes of the safe harbor, the term employee has the same meaning as it does for purposes of 26 U.S.C. 3121(d)(2).

The employee safe harbor would, at first glance, appear to protect all payments to bona fide W-2 employees. However, although the statutory exception and the safe harbor for employees appears to be complete, representations of the Office of the Inspector General ("OIG") over the years have cautioned that the statute exempts only payments to employees which are for the "provision of covered items or services." Accordingly, since referrals do not represent covered items or services, payments to employees, which are for the purpose of compensating such employees for the referral of patients, would likely not be covered by the

¹⁶ 65 Fed Reg 59434, at 59440, October 5, 2000

¹⁷ *Id.* at 59441

employee exemption. Recent court cases and settlements concerning physician employment arrangements are discussed below under the Stark Law section.

The safe harbor for personal services and management contracts, which would be applicable to a medical director agreement or a PPUC agreement, generally require that the contract: (1) be set forth in a written agreement signed by the parties; (2) cover all services to be provided for the term of the agreement, and specify the services covered by the agreement; (3) specify, in cases where agreement is intended to be on a periodic, sporadic, or part-time basis, the exact schedule of intervals, their precise length, and the charge for such intervals; (4) be for a term of at least one year; (5) set an aggregate services fee in advance that is consistent with fair market value in arm's-length transactions and that is not determined in a manner that takes into account the expected volume or value of referrals or business otherwise generated between the parties for which payment may be made in whole or in part under Medicare or a State health care program; and (6) include aggregate or services that do not exceed what is reasonably necessary to accomplish the commercially reasonable purpose for the services agreement. In addition, the personal services and management contracts safe harbor requires that the agreement not include any services that involve the counseling or promotion of a business arrangement or other activity that violates any state or federal law.

If the requirements of a safe harbor are not met for a particular financial relationship or arrangement, then the arrangement will be scrutinized to determine whether one purpose of the payment is to induce referrals. As noted above, the determination as to either party's (the payor or the recipient of the payment) compliance with the Anti-Kickback Statute rests on the parties' intent in entering into the proposed arrangement or transaction.

The Appearance of a Pattern of Conduct Evidencing Improper Intent

The IRO is aware that BH informed the OIG by letter dated December 7, 2016 of a Reportable Event as defined under Section III. K. 1.b of the CIA. The notification included a conclusion that Grant, during her tenure as the BHN CEO engaged in conduct that constitutes a probable violation of the Anti-Kickback Statute.

Further, on August 1, 2017, the IRO presented written findings from its review of certain Focus Arrangements between or among BH, certain of its employed and independent contractor physicians and John Knox Village of Florida, Inc. ("JKV"), which included a review of emails between Mark Rayner of JKV to Grant in which he solicited an "endorsement of JKV" by Grant in order to improve upon [JKV's] Medicare census. Mr. Rayner sought to "increase the flow of referrals to John Knox Village from NBMC." The IRO found the language in the Rayner email to be troubling, particularly considering the various Focus Arrangements which BH had with JKV. Moreover, it asked for referrals through steerage of patients from BH to JKV. The August 1, 2017 IRO Report also describes certain actions of Grant as they relate to Focus Arrangements with Dr. [REDACTED], which evidence a pattern of conduct requiring analysis by legal counsel of BH to determine whether such conduct constitutes a probable violation of the Anti-Kickback Statute or the Stark Law.

Grant's actions, which are described herein, evidence a similar pattern of conduct and require further analysis by legal counsel of BH to determine whether her conduct constitutes a probable violation of the Anti-Kickback Statute requiring a referral to the OIG. As a result of the documents reviewed and interviews conducted, the IRO does not believe the conduct of [REDACTED] and [REDACTED] suggest a violation or breach of BH Policy and Procedures by either of them.

B. STARK LAW

Unless subject to an exception, the Stark Law¹⁸ prohibits a physician from making a referral to an "entity" furnishing designated health services¹⁹ ("DHS") paid by Medicare or Medicaid (a "DHS entity") if the physician or a member of his immediate family has a "financial relationship" with that entity. More importantly for an entity furnishing designated health services (a "DHS Entity"), the Stark Law prohibits billing any individual, payer, or other entity for items and services resulting from a prohibited referral.

A "financial relationship" is defined to include both direct and indirect compensation arrangements. The IRO finds that the Arrangements between the Group and Broward Health which are described in this report clearly establish Focus Arrangements, which implicate the Stark Law.

Direct Compensation Arrangements

The Stark regulations provide exceptions to the referral prohibition relating to certain "direct" compensation arrangements²⁰. The exceptions which are potentially available for the services of the Group and the payments by Broward Health for the Group's services are the exceptions for personal service arrangements for the PPUC Agreements and the exception for bona fide employment for the part-time Employment Agreements and the Medical Director Agreements. If an exception is required for a compensation arrangement, all of the requirements of the applicable exception must be met.

a. Bona Fide Employment

The Stark law exempts amounts paid by an employer to a physician employee who has a *bona fide* employment relationship with the employer for the provision of services. The bona fide employment exception under 42 C.F.R.§411.357(c) exempts compensation paid to an employee if:

¹⁸ 42 U.S.C. §1395nn

¹⁹ The designated health services are: clinical laboratory services; physical therapy, occupational therapy, and speech-language pathology services; radiology and certain other imaging services; radiation therapy services and supplies; durable medical equipment and supplies; parenteral and enteral nutrients, equipment and supplies; prosthetics, orthotics, and prosthetic devices and supplies; home health services; outpatient prescription drugs; and inpatient and outpatient hospital services.

²⁰ 42 CFR § 411.357

- (i) the employment is for identifiable services,
- (ii) the amount of the remuneration under the employment is consistent with the fair market value of the services,
- (iii) the remuneration is not determined in a manner that takes into account, directly or indirectly, the volume or value of any referrals by the referring physician, and
- (iv) the remuneration is provided under an agreement that would be commercially reasonable even if no referrals were made to the employer.

The bona fide employment exception requires that the remuneration paid to the employee must be consistent with “fair market value” for “identifiable services” and “commercially reasonable.” Fair Market Value is defined as the value in arm's-length transactions, consistent with the general market value, which is comparable to compensation paid under bona fide agreements with comparable terms where the compensation has not been determined in any manner that takes into account the volume or value of anticipated or actual referrals.

It is important to note CMS' admonition in its Phase II preamble response that “fixed” compensation can be found to “take into account the volume or value of referrals” if it exceeds fair market value or is inflated to reflect business generated by the physician that he or she does not personally furnish. Likewise, if it is not commercially reasonable to enter into such employment agreement, then the exception cannot be satisfied.

b. Personal Services Arrangements

The exception for Personal Service Arrangements exceptions remuneration from an entity under an arrangement or multiple arrangements to a physician or his or her immediate family member, or to a group practice, including remuneration for specific physician services furnished to a nonprofit blood center, if the following conditions are met:

- (i) Each arrangement is set out in writing, is signed by the parties, and specifies the services covered by the arrangement.
- (ii) The arrangement(s) covers all of the services to be furnished by the physician (or an immediate family member of the physician) to the entity. This requirement is met if all separate arrangements between the entity and the physician and the entity and any family members incorporate each other by reference or if they cross-reference a master list of contracts that is maintained and updated centrally and is available for review by the Secretary upon request. The master list must be maintained in a manner that preserves the historical record of contracts. A physician or family member can “furnish” services through employees whom they have hired for the purpose of performing the services; through a wholly-owned entity; or through locum tenens physicians (as defined at §411.351, except that the regular physician need not be a member of a group practice).

(iii) The aggregate services covered by the arrangement do not exceed those that are reasonable and necessary for the legitimate business purposes of the arrangement(s).

(iv) The duration of each arrangement is at least 1 year. To meet this requirement, if an arrangement is terminated with or without cause, the parties may not enter into the same or substantially the same arrangement during the first year of the original arrangement.

(v) The compensation to be paid over the term of each arrangement is set in advance, does not exceed fair market value, and, except in the case of a physician incentive plan (as defined at §411.351 of this subpart), is not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties.

(vi) The services to be furnished under each arrangement do not involve the counseling or promotion of a business arrangement or other activity that violates any federal or state law.

2. Indirect Compensation Arrangements

The Stark Law also applies to indirect compensation arrangements.

Under 42 C.F.R. § 411.354, an indirect compensation arrangement exists if —

(i) Between the referring physician (or a member of his or her immediate family) and the entity furnishing designated health services (DHS) there exists an unbroken chain of any number (but not fewer than one) of persons or entities that have financial relationships (as defined in paragraph (a) of this section) between them (that is, each link in the chain has either an ownership or investment interest or a compensation arrangement with the preceding link);

(ii) The referring physician (or immediate family member) receives aggregate compensation from the person or entity in the chain with which the physician (or immediate family member) has a direct financial relationship that varies with, or takes into account, the volume or value of referrals or other business generated by the referring physician for the entity furnishing the DHS, regardless of whether the individual unit of compensation satisfies the special rules on unit-based compensation under paragraphs (d)(2) or (d)(3) of this section. If the financial relationship between the physician (or immediate family member) and the person or entity in the chain with which the referring physician (or immediate family member) has a direct financial relationship is an ownership or investment interest, the determination whether the aggregate compensation varies with, or takes into account, the volume or value of referrals or other business generated by the referring physician for the entity furnishing the DHS will be measured by the nonownership or noninvestment interest closest to the referring physician (or immediate family member). (For example, if a referring physician has an ownership interest in company A, which owns company B, which has a compensation arrangement with company C, which has a compensation arrangement with entity D that furnishes DHS, we would look to the aggregate compensation between company B and company C for purposes of this paragraph (c)(2)(ii)); and

(iii) The entity furnishing DHS has actual knowledge of, or acts in reckless disregard or deliberate ignorance of, the fact that the referring physician (or immediate family member) receives aggregate compensation that varies with, or takes into account, the volume or value of referrals or other business generated by the referring physician for the entity furnishing the DHS.

(iv)(A) For purposes of paragraph (c)(2)(i) of this section, except as provided in paragraph (c)(3)(ii)(C) of this section, a physician is deemed to “stand in the shoes” of his or her physician organization if the physician has an ownership or investment interest in the physician organization.

If an indirect compensation arrangement is found to exist, the parties will need to structure the relationship to meet the applicable exception. The elements of the exception for indirect compensation arrangements are set forth under 42 C.F.R. § 411.357(p).

In general, a physician's compensation would be excepted under the indirect compensation exception if it is

- fair market value for services and items actually provided by the physician, and
- is not determined in any manner that takes into account the volume or value of referrals or other business generated by the physician for the DHS entity to which the physician may make DHS referrals.

Further, the indirect compensation exception requires that the compensation arrangement between the physician and the physician's employer must be for identifiable services and be commercially reasonable.

The exception also requires that the compensation arrangement must not violate the Anti-kickback Statute.

3. Recent Court Cases

Recent court cases and settlements have considered the question of whether a physician's compensation “takes into account” the volume or value of referrals or other business generated by the physician for the DHS entity. These cases focused on alleged prohibited physician employment contracts of Tuomey Healthcare System, Halifax Hospital Medical Center/Halifax Staffing, Inc. and Mercy Hospital Springfield. The Tuomey case centered around 19 part time employed physicians, who only were employees of the hospital when they performed outpatient procedures. Tuomey compensated the part-time physician employees through base salaries and productivity bonuses of net collections and they were given full-time benefits. In the Halifax matter, the focus was on medical oncologists, who were paid bonuses equal to 15 percent of operating margin for the medical oncology program. It was alleged that the bonus was not based solely on personally performed services, but also included services provided including revenue from referrals for designated health services made by the medical oncologists. In the Mercy Hospital Springfield matter, a medical oncologist brought a *qui tam* lawsuit, alleging that the

hospital submitted false claims to Medicare for infusion services rendered to patients who were referred by employed physicians of Mercy Clinic to Mercy Hospital's Oncology and Infusion Center. The Mercy Clinic compensation model included a wRVU credit as a margin replacement for drug administration in the hospital department.

The positions taken by the government and *qui tam* relators in these and other matters underscore the fact that both the bona fide employment exception and the personal service arrangement exception are dependent upon full compliance with all requirements of the exception and that the fundamental requirements of fair market value compensation and commercial reasonableness can be brought into question.

IV. IRO FINDINGS AND RECOMMENDATIONS

Southeast Florida Hematology Oncology Group, PA and its physicians are a source of health care business or referrals to Broward Health. Dr. [REDACTED] is a source of health care business or referrals to Broward Health. Dr. [REDACTED]'s current employer 21st Century Oncology is a recipient of health care business or referrals from Broward Health. VITAS Healthcare Corporation of Florida is a source of health care business or referrals to Broward Health and is also a potential recipient of health care business or referrals from Broward Health.²¹ As a result, any direct or indirect offer, payment, solicitation, or receipt of anything of value between Broward Health and the Group, Dr. [REDACTED] or VITAS is an Arrangement as defined under the CIA and must be analyzed by the IRO to determine if it is a Focus Arrangement as defined by Section 3. C. 2. A. of the CIA. The IRO finds that the Arrangements between the Group and Broward Health, Dr. [REDACTED] and Broward Health and VITAS and Broward Health which are described in this report clearly establish Focus Arrangements, which implicate the Anti-Kickback Statute and the Stark Law.

The IRO finds - now for the third and contemporaneous time - that during Grant's tenure as BHN CEO, an alleged pattern of kickbacks occurred. While the IRO has taken the position of only making factual determinations of conduct it identifies and reviews, one thing is certain. The conduct at Broward Health Medical Center, which led to settlement with the government and the CIA, was only the beginning of uncovering what appears to be violations of federal criminal and civil health care laws. They appear to have occurred at Broward Health North at the direction of Grant. In the first annual IRO Report, dated October 7, 2016, we referenced Broward Health's "cultural war is often seen in NBHD's physician-centric tradition, in which senior management and staff instinctively defer to physicians, particularly regarding compensation." Seemingly, Grant personified this practice. Here, it appears in order to dramatically increase market share for hematology and oncology services furnished by BHN, Grant and others participated in a mutually beneficial three party referral arrangement in which payments and federal program reimbursement dollars were willingly shared among the parties, BHN, the Group, Dr. [REDACTED] and VITAS.

As noted above, when asked by the IRO, neither Dr. [REDACTED], nor [REDACTED], understood the necessity of hematologists-oncologists rounding on palliative care hospice patients in the VITAS hospice unit located in BHN. The IRO will leave it for others to determine if VITAS' contracting with the Group and Dr. [REDACTED] for rounding on hospice inpatients is medically and commercially reasonable and necessary.

The CIA requires Broward Health to develop and implement systems, policies, and procedures for implementing effective responses when suspected violations of the Anti-Kickback Statute and Stark Law are discovered, including disclosing Reportable Events and qualifying and repaying Overpayments when appropriate. Broward Health should conduct an investigation of the Compliance Issues and Ethics Issues identified in this report as required by its Policy No.:

²¹ Southeast Florida Hematology Oncology Group, PA and its physicians are a source of health care business or referrals to VITAS Healthcare Corporation of Florida

GA-004-242 II. This policy establishes a policy and procedure for Broward Health to establish a process for timely, thorough investigation of Compliance Issues and Ethics Issues, and to take prompt corrective and/or disciplinary action. Further, the IRO notes that Broward Health should take appropriate steps to identify, investigate and remediate instances of non-compliance with applicable federal and state requirements as required by law and Broward Health Compliance policies.²²

The IRO recommends that Broward Health request its outside counsel to review the matters discussed herein and advise on whether one or more of the Focus Arrangements resulted in a probable violation of the Anti-Kickback Statute and/or the Stark Law, requiring the disclosure of a Reportable Event. Outside legal counsel should also consider whether the conduct of individuals or legal entities described herein is in violation of other federal and/or state criminal or civil laws and if so, make any appropriate referral in accordance with Broward Health's obligations set forth under the CIA or otherwise required by law.

It is not the role of the IRO to make determinations of fair market value or commercial reasonableness of an Arrangement as required under the Anti-Kickback Statute or the Stark Law, but we recommend to Broward Health that it review the commercial reasonableness standard as applied to the Part Time Employment Agreements it has with the physicians discussed in this report. In addition, the financial relationships which VITAS has with the physicians discussed in this report and also with Broward Health should be reviewed and analyzed for compliance with the Anti-Kickback Statute and the Stark Law.

²²Policy No.: GA-004-242 III



CERTIFICATION OF INDEPENDENCE

BAKER DONELSON

CERTIFICATION OF INDEPENDENCE

Baker, Donelson, Bearman, Caldwell & Berkowitz, P. C. ("Baker") has been engaged by North Broward Hospital District ("BH") to serve as the Independent Review Organization ("IRO") as required by the Corporate Integrity Agreement ("CIA") between the Office of Inspector General of the Department of Health and Human Services and BH with an Effective Date of August 31, 2015.

This certification is being delivered pursuant to and in compliance with Section III. E. 4. of the CIA for purposes of certifying and affirming that Baker has (a) evaluated its professional independence and objectivity (i) with respect to the Arrangements Systems Review conducted by the IRO under Section III. E. and described on Appendix B of the CIA and (ii) in the preparation of the Arrangements Systems Review Report to which this Certification of Independence is appended and made a part thereof, and (b) has concluded that it is, in fact, independent and objective in accordance with the requirements specified in Appendix A to the CIA.

Baker certifies and confirms the following:

1. Except for its engagement by BH to serve as the IRO required by the CIA, Baker has no current and has had no prior engagements or agreements with BH.
2. Baker has reviewed the standards governing professional independence and objectivity set forth in the United States Government Accountability Office Government Auditing Standards (Revised 2011) (the "GAO Government Auditing Standards").
3. Baker has evaluated its professional independence and objectivity (as defined in the GAO Government Auditing Standards) (i) with respect to the Arrangements Systems Review (which is a component of the Arrangements Review) conducted by the IRO under Section III. E. and described on Appendix B of the CIA and (ii) in the preparation of the Arrangements Systems Review Report to which this Certification of Independence is appended and made a part thereof.
4. Baker has concluded that it is, in fact, independent and objective, in accordance with the requirements specified in Appendix A to the CIA.
5. Baker has conducted its IRO responsibilities under the CIA with respect to BH with professional independence and objectivity as defined in the GAO Government Auditing Standards.

Additionally, Baker confirms its prior Certification of Independence under the GAO Government Auditing Standards governing independence and objectivity relating to familiarity threats and certifies and affirms that no one participating in the IRO engagement relating to BH has any of the following:

1. A family or personal relationship with a District "Covered Person," as that term is defined under the Corporate Integrity Agreement between the Office of Inspector General of the Department of Health and Human Services and the District.

2. A close or immediate family member, who is a principal or senior manager of the District, pursuant to §A3.06 a. of the United States Government Accountability Office Government Auditing Standards (Revised 2011).
3. A close or immediate family member, who is an employee of the District and is in position to exert significant influence over the subject matter of the work of the IRO regarding the District, pursuant to §A3.06 b. of the United States Government Accountability Office Government Auditing Standards (Revised 2011).
4. A "familiarity threat," which would threaten any aspect of the relationship with management or personnel of the audited entity, such as a close or long relationship, or that of an immediate or close family member, which will lead the auditor to take a position that is not objective, pursuant to § 3.14 d. United States Government Accountability Office Government Auditing Standards (Revised 2011).
5. Accepted a gift or preferential treatment from the District, creating a "familiarity threat," pursuant to §A3.06 d. of the United States Government Accountability Office Government Auditing Standards (Revised 2011).
6. A long association with the District, pursuant to §A3.06 e. of the United States Government Accountability Office Government Auditing Standards (Revised 2011).
7. Any other relationship with the District, which impairs that IRO engagement member's ability to maintain independence and objectivity as required by the United States Government Accountability Office Government Auditing Standards (Revised 2011).

This certification has been executed and delivered on this date.

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, P.C.

By: 
J. Scott Newton

Dated: June 1, 2018



EXHIBIT D

BAKER DONELSON

J. SCOTT NEWTON, SHAREHOLDER
Direct Dial: 601.351.8914
Direct Fax: 601.974.8914
E-Mail Address: snewton@bakerdonelson.com

July 23, 2018

The Honorable Nancy Gregoire
Broward Health Board of Commissioners
Chair, Compliance and Ethics Committee
Broward Health
1800 NW 49th Street
Fort Lauderdale, FL 33309

Dear Commissioner Gregoire:

Due to your role as the Chair of the BH Board of Commissioners Compliance and Ethics Committee, we are writing to you to present findings regarding consulting services financial arrangements BH, through members of its senior management and others, entered into without following its CIA-required systems, policies, procedures, or processes or the requirements of the CIA.

THE IRO'S REPORT ON CONSULTING ARRANGEMENTS

I. INTRODUCTION

Following the settlement by and between North Broward Hospital District ("NBHD," "BH," or "Broward Health") and the United States Department of Justice ("DOJ") on behalf of the United States Department of Health and Human Services ("HHS") (collectively the "government") to resolve allegations that it violated the Stark Law and False Claims Act by engaging in improper financial relationships with referring physicians, a Corporate Integrity Agreement ("CIA") was imposed on BH. It became effective on August 31, 2015 and is being monitored by the HHS Office of the Inspector General ("OIG"). Thereafter, BH was required to take substantial internal systems and compliance corrective action measures. Those measures included the development of compliance policies, procedures, and processes as well as the engagement of an Independent Review Organization ("IRO"). Baker Donelson Bearman Caldwell & Berkowitz ("Baker Donelson" or "IRO") was engaged by BH and approved by the government as to its qualifications and independence to serve as the IRO.

A. SUMMARY OF THE IRO'S FINDINGS

In accordance with the IRO's CIA obligations, which are discussed with specificity below, the IRO's review of financial arrangement and compliance matters were not discretionary. To date, the financial arrangements undertaken include: (1) Reliance Standard Life Insurance Co. ("Reliance"), (2) Gallagher Benefit Services, Inc. ("Gallagher") (formerly, "Integrated Healthcare Strategies") and its subsidiaries or affiliates, including Insurance Point ("Insurance Point"), which served as the Third Party Administrator for Reliance; (3) AON Consulting, Inc. ("AON"), and (4) Chard Snyder and Associates, Inc. ("Chard Snyder").¹ More specifically, the IRO finds that BH's contractual arrangements with Reliance, Gallagher, Insurance Point, AON, and, apparently, Chard Snyder, failed to comply with CIA-required systems, policies, processes and procedures for initiating Arrangements and for the internal review and approval of Arrangements as required by the CIA.

BH's settlement, which was one of the largest involving the Stark Law in American history, regarded contractual arrangements and remuneration. The resulting CIA was put into place to ensure corrective compliance measures, including systems, policies, procedures, and processes were implemented, followed, and became a part of BH's culture. While it appears BH President and Chief Executive Officer ("CEO") Beverly Capasso, BH Senior Vice President and Chief Financial Officer ("CFO") Alan Goldsmith, BH Senior Vice President and Chief Human Resources Officer ("HR") Peter Nyamora, and BH Vice President, Human Resources Tory Drakeford have disregarded them with regard to at least five financial arrangements, the more significant issue is the now years old systemic operational disregard for the compliance measures, which following the implementation of the CIA, were put into place and approved by the government. As Certifying or Sub-Certifying Employees and Covered Persons under the CIA, each of them are "expected to monitor and oversee activities within their areas of authority" and certify, under penalty of false statement, to the government that their "job responsibilities include ensuring compliance....with all applicable Federal health care program requirements, and NBHD policies, and....have taken steps to promote such compliance."² More recently, BH senior management seems to have exhibited a willingness to sacrifice compliance with CIA-required systems, policies, procedures, and processes relating to contract initiation and approval in order to meet operational goals and/or time deadlines. It is even more troubling that the catalyst and haste for some of the conduct regarded the CEO's contract and executive pay.

Under the CIA, the BH Board of Commissioners ("Board") has an ongoing obligation to provide "oversight of matters related to compliance" and each member has a legal obligation to certify, under penalty of false statement, to the government that "The Board of Commissioners has made reasonable inquiry into the operations of NBHD's Compliance Program." In this report, we are independently presenting facts based upon produced documents and interviews.³

¹ The financial arrangement with Chard Snyder was identified in a recent interview as not having complied with the CIA-required contract processes. So, it has not been reviewed. For now, we leave it to the Board and/or outside counsel to address.

² Oddly, Cohen is not listed as a Sub-Certifying employee on documents reviewed by the IRO.

³ See IRO Certificate of Independence: The IRO conducted its review in a professionally independent and objective manner as defined in the *OIG Guidance on IRO Independence and Objectivity* and Generally Accepted Government Auditing Standards.

B. SCOPE OF IRO'S REVIEW

As part of its findings in the October 7, 2016 Arrangements Systems Review Report for the First Reporting Period and in its November 30, 2017 Arrangements Systems Review Report for the Second Reporting Period, the IRO summarized "the most substantive and pervasive Arrangements Systems deficiencies" it found which included, among others, deficiencies in BH's systems, processes, policies and procedures relating to the initiation, internal review and approval of Arrangements.

Section A of Appendix B of the CIA defines the scope of the Arrangements Systems Review as:

A review of BH's systems, processes, policies, and procedures relating to the initiation, review, approval, and tracking of Arrangements.

Specifically, Section A. 1-9 of Appendix B of the CIA identifies nine enumerated categories for IRO review. Two of the nine categories are specifically applicable to the matters covered in this report:

- **Process For Initiating Arrangements.**

"BH's systems, policies, processes and procedures for initiating Arrangements, including those policies that identify the individuals with authority to initiate an Arrangement and that specify the business need or business rationale required to initiate an Arrangement." CIA III. D. 1.e. and Appx. B, A.5.

- **Internal Review And Approval Of Arrangements.**

"BH's systems, policies, processes and procedures for the internal review and approval of all Arrangements, including those policies that identify the individuals required to approve each type or category of Arrangement entered into by BH, the internal controls designed to ensure that all required approvals are obtained, and the processes for ensuring that all Focus Arrangements are subject to a legal review by counsel with expertise in the Anti-Kickback Statute and Stark Law." CIA III.D.1.e. and Appx. B, A.6.

Broward Health adopted Compliance and Ethics Policies to ensure its compliance with the above CIA requirements. The BH Policies applicable to this review include:

- **Policy No: GA-004-441 Physician and Non-Physician Financial Arrangement Review, Approval, Tracking and Monitoring.**

Section IV. B. of the Policy sets forth the requirements of BH's Referral Source Contract Development and Review Process. Section IV. C. contains the process

for Approval of Referral Source Contracts. A copy of Policy No. GA-004-441 is attached as **Exhibit A**.

The Contract Development and Review Process requires, in part, that

- Contract Initiator, or his or her designee, shall complete an initial contract request to begin the contract development and review process;
- Contract Initiator, or his or her designee, shall be responsible for obtaining any and all supporting documentation necessary regarding the financial arrangement.
- Contract Initiator, or his or her designee, shall route completed initial contract request to the Corporate Compliance Department to review to determine if there are any compliance concerns with the party(s) to the financial arrangement.
- Upon Corporate Compliance Department approval, Corporate Resource and Materials Management ("CRMM") will perform the due diligence on all parties, including background screening and ineligible persons and CRMM Department procedures.
- CRMM shall be responsible for managing the contract database. The completed contract assessments and supporting document shall be received by CRMM from the Contract Initiator via the contract database's routing process.
- Once all contract assessments are submitted CRMM will route the contract workflow for Focus Arrangement review.

The process for Approval of Referral Source Contracts requires the Contract Initiator to approve the financial arrangement prior to transmission of the contract to the General Counsel's Office for final review. The Contract Initiator is responsible for reviewing and approving the proposed contract for accuracy and completeness and to ensure that all supporting documentation relevant to the proposed contract has been obtained.

As a part of the IRO's on-going Arrangements Systems Review into the "substantive and pervasive" issues described above, the IRO became aware that senior BH Human Resources Department personnel and certain members of the BH senior executive team negotiated, were aware of, or became aware of and did not disclose to the BH Chief Compliance Officer Nick Hartfield, BH General Counsel Lynn Barrett, or the Board the negotiation of consulting services financial relationships with Reliance, AON, Gallagher, and Insurance Point:

1) Occurred in a manner that did not comply with BH's CIA-required systems, policies, processes and procedures for initiating Arrangements; and

2) Were not submitted in a timely manner (or at all) for internal review and approval as required by BH's CIA-required systems, policies, processes and procedures and the CIA.

Accordingly, to confirm whether deficiencies occurred in the initiation of the financial relationships negotiated with Reliance, Gallagher, Insurance Point and AON, the IRO conducted numerous interviews of BH personnel and a comprehensive review of *produced* documents,⁴ including BH Policies and Procedures, approximately 45,000 emails and attachments and related documents, minutes and related presentations from meetings of the Board of Commissioners, contracts, proposals, power point presentations, comparative market survey documents, and dozens of other documents. We conducted detailed reviews of drafts and final versions of a variety of documents, particularly proposals and contracts, as well as contemporaneous documents regarding them to attempt to fully understand what factually occurred with regard to work BH officials engaged Reliance, Gallagher, Insurance Point and AON to perform. We also conducted interviews to, among other things, ensure the accuracy and context of documents reviewed. The IRO finds that BH continues to have the same substantive systemic institutional deficiencies in and failures in compliance with its systems, processes, policies and procedures relating to the initiation, internal review and approval of Arrangements as the IRO has identified in its previous reports.

⁴ As set forth in detail below, following the IRO's June 29, 2018 request for documents, Capasso, Goldsmith and Nyamora failed to produce any or any substantive documents. Additionally, Nyamora was unavailable to be interviewed. Despite the issuance of this Report the IRO, acting within its scope of authority and independence, should expect truthful and complete cooperation from BH's senior management in producing documents and in ensuring availability of employees for interviews. As a result, we ask the Board, based upon its legal duty to comply with the CIA, to ensure it occurs.

C. RELIANCE 2017 CONTRACT RENEWAL

The IRO identified the following renewal contract, which was entered into between BH and Reliance without following the BH procedure relating to the initiation, internal review, and approval of the renewal contract.

Reliance Standard Life Insurance Co.

On July 13, 2017, Reliance Standard Life Insurance Company ("Reliance") National Client Manager Kathy Schmoling sent a renewal letter agreement to the then BH Director/Compensation, Benefits & HRIS Vincent Colonna. On October 5, 2017, BH CRMM Contracts Analyst Carlos Gonzalez, sent a notice to BH Benefits Manager Alicia Pasillas indicating that the Service Agreement with Reliance⁵ was within 180 days of expiration on December 31, 2017. On October 25, 2017, Pasillas responded to Gonzalez, attaching a signed binder and asking him, "Can we please move forward with this?" Pasillas email seems to indicate her knowledge of the contract process. It also creates the appearance that she may have spoken with Nyamora and was pressuring Gonzalez because earlier on October 25, 2017 Nyamora signed the Reliance renewal letter and checked box B which stated: "We agree to renew the Broward Health Dental and Vision plans, with the alternate Vision plan, at the rates noted above, until 1/1/2019." **Exhibit B.** Two days later, Gonzalez emailed Pasillas, copying BH Associate Vice President, Benefits and Wellness Jennifer Cohen and others, asking whether Nyamora had authority "to execute this type of agreement." In response, Cohen assured him that Nyamora had authorization. Interestingly, Gonzalez asked for Nyamora or Cohen to "please be so kind to send me a copy of the authorization...." After several email exchanges, on November 1, 2017, Nyamora's secretary emailed Gonzalez and Cohen, copying Nyamora, indicating Nyamora "doesn't have this paperwork." Fortunately, the IRO does. Gonzalez's repeated process requests, the email exchanges, and Nyamora's sudden *loss* of an executed renewal just a week after he had executed it leads the IRO to believe that Nyamora knew he had disregarded the CIA-required contract process by knowingly prematurely executing the renewal agreement on October 25, 2017.

On November 2, 2017, Pasillas emailed Gonzalez, attaching a copy of the Reliance renewal agreement, which had been signed by Goldsmith on November 1, 2017. **Exhibit C.** The IRO finds Goldsmith executing the Reliance renewal, which he knew or quite easily should have known had not gone through the CIA-required contract process, constitutes a complete disregard of the CIA-required contract process. On November 7, 2017 Gonzalez emailed Pasillas indicating that he could not find the Reliance renewal in Compliance 360 or Meditract and to ask if she had submitted the contract renewal for Focus Arrangement review. She responded that she was "unaware if it has been in FA review - I personally have not sent to anyone in FA/Corporate Compliance." Separate November 9, 2017 emails to Gonzalez from Cohen (at 9:45 am) and Nyamora (at 9:52 am) stressed the urgency of getting the renewal expedited, obviously trying to pressure him. BH CRMM Sourcing Manager Juan Ugalde responded to Nyamora, Cohen, Pasillas and others at 9:59 am, advising that he had forwarded

⁵ Contract number 8020.4507C.

the emails to Hartfield to ask if a Focus Arrangement review was needed. Additionally, after BH's Contracts Administration personnel informed Cohen that the Reliance renewal would need to go through the contract process in Compliance 360, Cohen asked for clarification as to whether a Focus Arrangement review would be needed. Within the hour of her email request, her supervisor, Nyamora, emailed Hartfield directly and asked that he advise what is required as "we do this contract annually" and emphasized that "we have very little time on this." Upon receipt of the July 13, 2017 Reliance notification of the eventual expiration of the contract, BH had nearly six months to ensure its renewal was appropriately completed. As a result, the expedited process appears to have been done due to operational deficiencies and/or Nyamora trying to ensure his signing of the renewal without going through the CIA-required process was not discovered.

On November 11, 2017 Hartfield emailed Nyamora and Cohen, explaining in detail that "all new or renewed contracts are required to go through our contracting process" for determination to be documented in the contract file as to whether the contract is a Focus Arrangement and for Compliance 360 to accurately reflect the current status of the agreement. Emphasis added. Hartfield explained that the renewal should have been submitted to Contracts Administration to go through BH's contracting process, at which point Contracts Administration "would have initiated the process, compiled the required documents, and the appropriate reviews would have been sent to be completed." Once all reviews were completed and documents obtained, the renewal would be presented by Contracts Administration to the CEO or CFO for signature.

In his email response to Hartfield, which included Hartfield's prior email and copied Capasso, Santorio, Goldsmith, and Barrett, Nyamora defended the actions of Cohen and stated that he completely disagreed with the implication that this is somehow the process owner's fault. Instead he blamed the contracting process as not working efficiently. Without assigning blame, Hartfield clearly described the contract process and what is required. He also warned:

"We cannot have agreements being executed without going through our contract process without Compliance being made aware of this and approving. We have had issues with this in the past and made representations to the OIG in last year's Annual Report that this would not be occurring in the future." Emphasis added.

As I explained in my first email this renewal has already been executed so all employees will have vision and dental insurance. It will go through the process already executed and if it is determined that it is a Focus Arrangement then we will have to figure out how to handle it."

Copies of the email correspondence are set forth on **Exhibit D**.

It is important to reiterate that copies of the email correspondence between Hartfield and Nyamora were sent to Capasso, Santorio, Goldsmith, Barrett and Cohen. Considering training, experience, education, and the specificity and clarity of Hartfield's detailed contract process

email, it clearly instilled knowledge of their obligations under the CIA-required contract initiation process as of November 11, 2017. As will be seen, at least by early November 2017, the CIA-required contracts process seems to have been disregarded going forward by BH's senior operations management. It is troubling to report that BH senior management and others would subsequently ignore Hartfield's warnings and continued to disregard the obligations placed on the Contract Initiator to follow BH's Focus Arrangements Policies and Procedures and meet the requirements described in Sections III.D.1 and III.D.2 of the CIA, regarding other subsequent financial relationships established with AON and Gallagher in 2018.⁶

⁶ But for Gonzalez repeatedly insisting that contract initiation processes be followed despite senior management pressure to do otherwise, the conduct would not have been uncovered by the IRO in its email review. Gonzalez should be commended for his efforts.

D. AON STATEMENT OF WORK FOR CEO MARKET TOTAL REMUNERATION REVIEW

1. AON CONTRACT WAS NOT ENTERED INTO COMPLIANCE 360

The IRO identified the following financial arrangement/consulting services agreement, which was proposed or entered into between BH and AON and under which AON performed services associated with the total remuneration assessment of the CEO's salary and benefits for a \$10,000 flat fee. BH's senior management failed to follow the CIA-required systems, policies, procedures, and processes relating to the initiation and internal review and approval of the renewal contract. The IRO found that the terms of the AON Statement of Work for consulting services required to conduct a CEO Market Total Remuneration Review was never submitted to CRMM, nor was it was processed through Compliance 360.

Broward Health CEO Total Remuneration Review⁷

On February 1, 2018, BH entered into a Health and Benefits Consulting and Aon Rx Coalition Services ("H&B") agreement, which included a provision that fees would "not exceed \$250,000." The agreement does not, in any way, refer to or consider the performance of a remuneration assessment of the CEO's salary and benefits services. To the contrary, the agreement clearly specifies the scope of work, adding a provision that provides that "*For any additional services requested and not defined in the services listed above, fees will be determined on a time and materials basis in accordance with Aon's standard billing rates.*"

Exhibit E. After a brief pricing negotiation, on February 23, 2018, Aon's Ruth Ann Looney provided a Statement of Work from AON Consulting, Inc. ("AON") for the "CEO Market Total Remuneration Assessment and Retention Plan Design" and a data request in response to Cohen's requesting an "Exec Comp/SERP quote." **Exhibit F.**

Cohen copied and communicated with Drakeford on the project. In fact, Cohen informed Looney that she included Drakeford in the string of emails, so that he could review and sign the agreement and also help to compile the necessary information AON needed. The IRO reviewed a letter, dated February 23, 2018, from Looney to Drakeford outlining the proposed scope of services and project steps regarding the total remuneration assessment and retention plan design for the BH CEO.

Drakeford responded with a February 23, 2018 email to Looney stating that he could confirm BH's agreement by email with all of the terms of the agreement, excluding the 4-6 week timeline. He asked to expedite the review process to target three weeks for a mid-March turnaround to have the review completed prior to the March 25, 2018 Board meeting. Upon

⁷ The scope of services to be provided were described in a February 23, 2018 letter from Ruth Ann Looney of AON to BH Human Resources Tory Drakeford. AON provided a total remuneration assessment of the Chief Executive Officer's salary and benefits for a fee of \$10,000.

reaching the agreement, Drakeford signed the AON Statement of Work letter and returned it to Looney. **Exhibit G.** Thereafter, Drakeford furnished AON requested data. He then worked directly with Looney in the selection of ten hospitals for salary comparability purposes, offering his rationale for cutting some of them and adding others in the process.

When interviewed by the IRO, Drakeford commented that he thought that BH had an existing contract with AON. He assumed that the AON CEO Total Remuneration Review work to be done by AON would fall under the scope of work for the February 2, 2018 contract with AON. He said that he would want to look back at the January 31, 2018 contract. He added that he was "not prepared" to talk about the AON engagement for the CEO Total Remuneration Review. When asked by the IRO, however, about the performance of additional services being provided by AON and billed on a fee for service basis and the February 23, 2018 was outside the scope of the H&B agreement, Drakeford advised that the "responsibility is on everyone" to ensure the contract process was followed. After being shown the January 31, 2018 contract with AON, Drakeford said that:

"if the original contract was not interpreted to cover the scope of services for the CEO Total Remuneration Review, then Broward would have had to go through the contract review process."

The January 31, 2018 contract with AON describes the scope of work on Exhibits to the contract as follows:

Exhibit A – Part 3: Broker of Record for Broward's medical, dental, vision, disability, life insurance and elective benefits.

Exhibit A – Part 4. AON coalition services, Pharmacy Benefit Management services for Broward's prescription drug program, PBM pricing and assurance that the quality of Broward's prescription drug benefits is maintained.

As stated above, there is no reference to other types of consulting services, such as were furnished in the CEO Total Remuneration Review.

The IRO reviewed minutes of meetings of the Board of Commissioners and its Committees. The IRO found that Nyamora reported at the March 28, 2018 Board of Commissioners meeting that the AON CEO Total Remuneration Review included market base salary data, which resulted in a "Fair Market Value" salary determination for Capasso's CEO salary. Nyamora represented to the Board of Commissioners that Capasso had agreed to a salary, which was more than one hundred thousand dollars less than the recommended "Fair Market Value" salary. He apparently stated that without the inclusion of the Performance Incentive Pay Plan, BH would not be paying the full market value to BH's leadership. The IRO leaves it to the Board as to whether Nyamora's statements were truthful.

The IRO reviewed the AON CEO 2018 Total Remuneration Review – Final Report, dated March 2018. AON did not describe its work as independent of BH, nor contrary to

assertions made to the Board, did AON render a "Fair Market Value" determination. Instead, AON conducted a compensation analysis using market data obtained from publicly available IRS Forms 990 (from a comparable peer group ultimately selected by Drakeford) and published survey sources. On page 5 of its Report, AON cautioned that the "competitive data should be viewed as one point of reference and should not be interpreted rigidly." AON noted that differences in pay relative to market salaries should be taken into consideration. AON advised that these differences can be attributed to experience level or time-in-position, incumbent/organization performance issues, geographic labor conditions, current economic climate and recent scope changes due to increase/decrease in revenues.

Based on the description of the compensation analysis methodology contained in AON's Report and on emails by and between Drakeford and Looney, the IRO can only conclude that the CEO Total Remuneration Review prepared by AON was merely a compensation assessment based on a survey of and comparisons of CEO salaries prepared in cooperation and collaboration with BH personnel and does not reflect a "Fair Market Value" determination done on an independent basis. When asked by the IRO whether the AON CEO Total Remuneration Review was done on an independent basis with findings of fair market value, Drakeford defended the study as representing Fair Market Value. As stated, however, the IRO found, and is supported by numerous emails, that Drakeford directed Looney throughout the data collection and review process. He participated in conference calls with Looney to discuss the "comparator group." Looney prepared a list of potential peers for a Form 990 analysis. She selected 20 potential peer participants based on revenue size and location. She allowed Drakeford to select the 10 organizations he wanted AON to include in gathering compensation data from the Form 990s. Drakeford rejected the inclusion of data concerning one health care organization, stating: "I fear their prior year revenue and recent changes may not completely reflect the direction that organization is headed in the future and the pay may be set too low presently based on their prior fiscal year rev." Emphasis added. Drakeford considered Atlanta-area Tenet hospitals, which he knew were performing well. Drakeford directed Looney to swap one organization on her list for another. He then directed her to use the resulting list of 10 organizations. Despite his assertions to the contrary when interviewed, emails confirm Looney followed Drakeford's direction. **Exhibit H.**

The Purported "Negotiation" of Capasso's Contract

In her interview, Capasso advised the IRO that "I was told in negotiation for my salary that \$850,000 was what the "market showed" and that was the only discussion. There wasn't a negotiation. I just accepted it as is." She added, "to the best of my recollection, I was told by Peter and I accepted less - \$750,000....I didn't sit across the table in formal negotiation." The IRO is not concerned with the CEO's salary, which is a determination exclusively for the Board, and outside the scope of review unless it adversely effects compliance with matters addressed by the CIA or results in deficiencies arising regarding CIA-required systems, policies, procedures, and processes. While Capasso advised the IRO and others that she did not negotiate her contract, numerous favorable provisions, particularly the incentive program, were identified in it. When compared to prior CEO contracts, the provisions were not similar. Contrary to the

IRO's comparison, Nyamora stated at the March 28, 2018 Board meeting that "A draft contract was prepared based on the District's form agreement, not unlike used for previous CEOs." Capasso did not "negotiate her contract," so it is difficult to ascertain how the new favorable provisions were included in the agreement.

It is compelling to note that the March 28, 2018 Board meeting, where Capasso's contract was approved, there was no apparent specific discussion of "AON" in the meeting.⁸ The IRO finds the lack of discussion of the company, which according to Nyamora and the subsequent BH press release, completed a so called "Fair Market Value" determination to be significant. Considering Nyamora emailed Capasso's draft agreement and the "CEO Salary Analysis for your review" to BH Board Chairman Andrew Klein the day before, it is also surprising that neither of them appears to have mentioned AON by name. **Exhibit I.** The IRO finds it stunning that a third party compensation report for the CEO, who reports to the Board, appears to not have been shared with any of its members except the Chairman.⁹ Additionally, on March 27, 2018, Nyamora sent "President/CEO Talking Points" and a link to information regarding outside counsel to Klein. The IRO finds the sharing of "Talking Points" between an operational employee and a Board member to be highly unusual. **Exhibit J.** The IRO leaves any potential issues arising from all of it to the Board or others to address.¹⁰

The IRO believes that comments and representations made or implied to the Board of Commissioners at its Board or Committee meetings or individually and in correspondence with members of the Board of Commissioners, and or its Committees, by Capasso, Nyamora, and possibly others, suggesting that the CEO Total Remuneration Review conducted by AON resulted in a "Fair Market Value" determination were incorrect, misleading and untruthful. As described above, Drakeford's active participation in developing the comparator group undeniably shows that AON's analysis was not an independent analysis or determination. Moreover, AON did not suggest its work was independent, nor does the consultant describe it as being a "Fair Market Value" determination.

2. AON CONTRACTS IN COMPLIANCE 360

The IRO identified the following financial arrangements entered into between BH and AON for which BH personnel followed the BH procedure relating to the initiation and internal review and approval of the renewal contract:¹¹

⁸ "AON" may have been mentioned in a handout to the Board, which was not provided to the IRO.

⁹ The IRO understands Nyamora is in possession of a document, which would be relevant to its review, but was not produced by him.

¹⁰ Interestingly, based upon a review of the legal bills submitted by outside counsel, the work included a review of Capasso's contract and communications with Nyamora. The outside counsel does not appear to have been involved in the negotiation.

¹¹ Other new projects proposed by AON were identified as (i) **Employee Paid Time Off Program.** July 2, 2018 letter from AON covers scope of new work and describes compensation as a fixed fee of \$50,000 and (2) **Proposal for Actuarial & Pensions Administration Services.** AON submitted proposal dated June 15, 2018.

1. Health & Benefits Consulting and Aon Rx Coalition Services Agreement

a. Services

Exhibit A – Part 3: Broker of Record for Broward's medical, dental, vision, disability, life insurance and elective benefits

Exhibit A – Part 4. AON coalition services, Pharmacy Benefit Management services for Broward's prescription drug program, PBM pricing and assurance that the quality of Broward's prescription drug benefits is maintained

- b. Compensation - \$250,000 flat fee plus commissions on certain placements, as disclosed and agreed to in a separate comprehensive disclosure statement.

2. Discount Database – Client Confidentiality Agreement¹²

Pursuant to the Discount Database contract, AON reported discount information to BH in order to evaluate its employee health benefit programs. AON maintains a discount data base. BH requested AON to provide discount information and AON required a Confidentiality Agreement related to Vendor information maintained in AON's discount data base. The contract was subsequently executed by BH.

E. GALLAGHER CONTRACTS

1. BEVERLY CAPASSO'S REPRESENTATIONS TO BH COMMISSIONER STEVEN WELLINS THAT SHE HAD INVESTIGATED THE GALLAGHER CONSULTING ARRANGEMENT

On May 15, 2018, BH Commissioner Steven Wellins emailed Nyamora, copying Capasso, to "provide the most salient points of our conversation earlier today." In listing nine concerns, Wellins noted that, with regard to benefits consultant search, he preferred that BH hire an attorney with benefits experience to give them "an informed opinion on the program and metrics as a starting point in building an incentive compensation plan." He noted the HR Committee and Board was expecting a \$15,000 - \$20,000 contract. Commissioner Wellins noted that "at no time did you ever discuss with me a much larger scope of work or a contract for services in the \$250,000 range." In her May 16, 2018 email response, Capasso advised Commissioner Wellins that "we will investigate your concerns and respond back to you." On May 18, 2018, Capasso emailed Commissioner Wellins to advise "I have concluded my investigation." On May 25, 2018, Commissioner Wellins and Capasso spoke on a telephone call. With regard to the consultant engagement, Capasso advised him that "no money had been spent" and "no work had done yet." (sic). Later in the conversation, Capasso twice advised him

¹² May 22, 2018.

that there was "no scope, no contract." Interestingly, when Commissioner Wellins asked for a copy of the draft consultant contract, so he could review it prior to the May 30, 2018 Board meeting, she responded that the "Board was not involved in the contract process - so she does not feel it was necessary for (him) to see it. She had the authority to do it without Board approval."

The IRO can reach only one conclusion regarding Capasso's comments to Commissioner Wellins that she conducted an "investigation" into the Gallagher contract. It was either a misrepresentation in that no investigation was conducted or one was conducted and she quickly learned - exactly what the IRO has - that members of BH's senior management team and others disregarded the CIA-required systems, policies, procedures, processes and breached their obligations under the CIA. She also would have quickly realized - exactly what the IRO has - that they may have subsequently submitted false certifications of compliance to the government. Moreover, she would have learned that Gallagher produced its work product, including the 278 power point analyses and twenty-two page PowerPoint in preparation for the May 15, 2018 HR Committee meeting to BH on May 11, 2018¹³ or five days before Capasso purportedly began her "investigation." She would have learned that Drakeford, Cohen and others - exactly what the IRO has - produced records and worked with Gallagher to assist them in completing their work. She either obtained the work product and failed to disclose it or did not obtain it from those who had it readily available, including Drakeford, Nyamora, Santorio and possibly others, who if asked, could have easily provided it to her. It begs the question, if Capasso did not talk to Drakeford, Nyamora, or Santorio during her "investigation," to whom did she speak? **Exhibit K.**

The IRO identified the following financial relationships, which were proposed or entered into between BH and Gallagher and under which Gallagher performed services without BH personnel following the BH procedure relating to the initiation and internal review and approval of the contract:

Consulting Services Arrangement¹⁴

Gallagher furnished services under the arrangement and prepared and provided deliverables to BH prior to the financial relationship being entered into Compliance 360 and before any assessments were conducted. Ultimately, the contract was not approved and Gallagher has issued a demand letter to BH for payment.

On April 25, 2018, Drakeford sent an email to BH Senior Vice President and Chief Operating Officer ("COO") Gino Santorio and Nyamora, informing them that he had talked with Gallagher representative(s) and started the dialogue for securing their consulting services for BH's Executive Market Study. Drakeford reported that he asked Gallagher representative(s) to

¹³ According to Gallagher's June 19, 2018 invoice and several related contemporaneous May 2015 emails.

¹⁴ Contract #2001524 Gallagher prepared a market study of BH's 43 positions. The arrangement called for Gallagher to conduct a competitive analysis of total compensation for each position, relative to the total compensation in the comparable peer group and to assess competitive level of salaries, incentives and benefit costs. The contract was not executed by BH.

prepare a proposal for conducting a market study that included a comparison between market and total remuneration, adding base salary, benefits, retirement, incentives, and the like. Drakeford stated that BH would start working on preparing the data requests for Gallagher to accelerate the market review. **Exhibit L.**

On April 26, 2018, a Bid Exemption Recommendation was submitted for the Agenda of the May 2018 Procurement Steering Committee by Drakeford for the proposed Consulting Agreement with Gallagher to conduct a review of Broward Health's executive total compensation program and develop recommendations. Nyamora was listed as the Responsible Executive. Goldsmith signed and approved the exemption recommendation. **Exhibit M.** On April 28, 2018, Drakeford asked Gallagher representative(s) to make a change to its proposal to expand the scope of work to include seven additional (AVP) positions. Gallagher added these positions, modified its fee range and supplied Drakeford with an updated proposal, dated May 1, 2018. **Exhibit N.**

The work Gallagher did on the project was itemized in a June 20, 2018 Letter Demand for Payment sent by Gallagher Benefit Services Executive Vice President and General Counsel Jennifer M. Ryder to Barrett. In its Demand, Gallagher alleges that it informed Drakeford that pending his approval, it would have to start working immediately. Gallagher further alleges that Drakeford understood and agreed the parties would have to move forward while their respective legal teams simultaneously formalized a written agreement. In an email dated April 26, 2018, Drakeford advised them that the fees were "agreeable." **Exhibit O.** Gallagher submitted an invoice dated June 19, 2018, which shows that Gallagher began its work on the project with the submission of its proposal on April 26, 2018 and worked on the project through May 11, 2018. **Exhibit P.**

Gallagher began work on the project prior to Drakeford's taking or Nyamora ensuring the required steps to begin the process for initiation and review of the contract and prior to the final approval of the contract. Gallagher continued work on the project while the contract was being processed and assessments were being made by CRMM. Drakeford submitted the contract for the project to CRMM and it was initially inputted into Compliance 360 on May 3, 2018. Seeking a way to move the contracting process through quickly and/or avoiding it, Drakeford inquired of BH Manager of Finance Operations Kyle Smith and BH Director of Contract Administration Tia Bowman whether they:

"could register Gallagher on the vendor portal by resetting the password given to another division of Gallagher (Insurance Point) or register the separate division differently or do something else to expedite" **Exhibit Q.**

An email dated May 7, 2018 from BH's Ana Jimenez to Tia Bowman, Christina Lehne, Kyle Smith and Tory Drakeford gave the status of the contract review as "pending Focus Arrangement Review."

On May 11, 2018, at 1:56 p.m. Drakeford emailed Christina Lehne, Gino Santorio, Kyle Smith and Tia Bowman to inform them that he had forwarded the contract to Gallagher.

An email dated May 11, 2018 @ 2:35 pm from Christina Lehne to Gino Santorio, Tory Drakeford, Kyle Smith and Tia Bowman stated that:

"Gallagher Benefit Services 2001524 contract has been approved to legal form and is ready for Gallagher's signature."

By email, dated May 11, 2018 @ 4:26 pm, from Lynn Barrett to Peter Nyamora and Gerald Del Amo, Barrett provided important clarification on the limited scope of approval by the Legal Department. She stated:

"As we discussed with you, legal approved the contract as to legal form and recommended changes to the compensation section to make clear that ALL expenses and fees are included in the contract maximum. Having said that, we still believe that the contract is not consistent with the Board's request/authorization as to both scope and cost. We recommend that clarification be sought by the Board as to scope and cost before this contract is executed."

Despite Barrett's warning and with Gallagher's work apparently complete, Nyamora and others continued to move forward with the negotiation of the contract and to place it in final form for execution.

On May 24, 2018 Peter Nyamora sent an email to Gerald Del Amo, copying Christina Guzman, Tia Bowman, Tory Drakeford, Gino Santorio, Lynn Barrett and Christina Lehne, stating:

"I spoke to Gino and we are not approving the contract as it stands."
Exhibit R.

On May 24, 2018 by email from Gallagher's Terri Nowicki Smith to Tory Drakeford, Gallagher submitted for payment Invoice #201803843, dated May 23, 2018, for \$77,575.00 for "1st half of the professional fee per the contract dated May 1, 2018 for the total compensation study (base salary, incentives, and benefit costs) for 42 positions."¹⁵

Drakeford responded by email on May 24, 2018:

"Terri - The contract for this service has not been fully executed. Payment would be due upon agreement to the contractual terms." **Exhibit S.**

¹⁵ Although Invoice #201803843 references 42 positions, BH documents reference 43.

In the June 20, 2018 Letter Demand for Payment from Gallagher to Lynn Barrett, copying Drakeford and Nyamora, Gallagher included a second invoice for payment, Invoice #201805136 for \$38,479.88, brought the total billed for the work to \$108,462.50.¹⁶ **Exhibit T.**

In the IRO's interview of Drakeford, he acknowledged that he furnished data in response to Gallagher's data request and that he had multiple conversations with Gallagher representatives prior to the contract being processed by Compliance 360. While he advised the IRO that he told Gallagher representative(s) that the contract would have to go through the contracting process, the IRO finds it compelling that he tried to reset a password to accomplish it a few days before. He acknowledged that BH received a 278 page comprehensive draft analysis and a 22 page power point for presentation to the Board from Gallagher before on or about May 11, 2018. **Exhibits U and V.** Drakeford stated that Gallagher knew that the contract was not done and that Gallagher made the decision to take the risk to move forward with work in anticipation of having a contract. When asked why he moved forward on the matter without a contract approved through Compliance 360, he said that "we have our daily duties and tasks to do. We work through them."

Consulting Services Arrangement¹⁷

Gallagher was to provide consulting services for employee life, disability, dental and vision RFPs. As of July 17, 2018, the contract was identified in Compliance 360 as POD in Process.

The IRO interviewed Cohen, who worked extensively on the consulting services arrangement with Gallagher. She confirmed that Gallagher began work on the RFP process before the contract was signed. She added that the arrangement was initiated in Compliance 360, but for "operational reasons," Gallagher began work before the contract was approved.

When interviewed by the IRO, Cohen was shown the February 2, 2018 AON H&B agreement. Cohen stated "this contract is not related to executive compensation work." When asked about the February 23, 2018 AON Statement of Work, she noted that it "was special to the CEO." She advised that Drakeford "told her to budget it from the Statement of Work under the H&B contract." In doing so, Cohen "approved" the \$10,000 payment to AON.¹⁸ **Exhibit W.** In fact, the IRO's review found that BH documents reflect a payment diversion from the CEO Total Remuneration study to the H&B contract. Cohen stated that she was not aware of the February 23, 2018 AON Statement of Work going through the contracts process. The obvious reason for Drakeford to advise her to do it is because, with the AON CEO Total Remuneration work not having gone through the process, no contract number existed under which Accounts Payable

¹⁶ Although Invoice No. 201805136 references "Total project fees of \$108,462.50," the total of Invoice 201803843 (\$77,575) plus Invoice No. 201805136 (\$38,479.88) amounts to \$116,054.88.

¹⁷ Contract #2001315.

¹⁸ The IRO has not determined if the \$10,000 payment was made to AON, but leaves a determination of whether the amount was within Cohen's authority under the BH Procurement Code to the BH General Counsel, Chief Compliance Officer, and Board. Disturbingly, if the \$10,000 has not been paid, on or about May 22, 2018, AON received the Discount Database work, which we believe will result in a substantial amount of fees for the company.

could pay it. So, senior HR officials, with the possible knowledge of others in senior management, simply applied it to the wrong contract number to ensure payment and avoid scrutiny. Cohen added, "I may be conflating a budget issue with a contracts issue," noting she had been told there was a four month turn-around time to get contracts approved.

With regard to the AON work, Cohen described herself "as more of an observer because Tory and his team were handling it." She stated that "their work started before the contract was signed" and that she was asked and provided data regarding the value of benefits" to Drakeford. She noted that she provided similar information as part of the AON CEO Total Remuneration work. With regard to AON, she said "I was aware they were doing work. I was aware they were working on executive compensation, but I was not aware of specifically what they were doing." When asked if having vendors work prior to entering a contract (and as a result are outside the contractual process required by BH) was an on-going practice at BH, Cohen said, "yes," particularly if "it goes to operational needs." She added that "all of the benefits work goes through Tory, Peter, and Alan. That is something I've seen happen" regarding work being performed even though a contract was not in place. She referenced it happening with Fidelity. She reiterated that "we haven't completed the contract cycle knowing it takes so long. Even knowing the CIA rules, it is not uncommon for the inception of work to begin before the ink is on the paper." She stated, however, that "things are loaded into C360 ASAP."

With regard to following the contract process, Cohen said "I don't know who I am supposed to speak to, but I can tell you who I speak to - Tory, Peter and Alan." Cohen described them as the individuals to whom she reports. When asked who at BH was responsible for compliance, Cohen initially mentioned "Bev Capasso." She then mentioned that she addressed compliance issues with Tia Bowman, who she understood "went to Nick and Lynn." When the IRO suggested to her that she had not mentioned the role of Compliance in the contract process or BH's Chief Compliance Officer, she stated, "No. I have never had a conversation with the Compliance Officer on these issues." Lastly, Cohen referenced Aetna continuing to work since February of 2017 because a renewal had not been executed. She also mentioned Chard Snyder and Associates having been working since July 1, 2018 without a contract, but "I'm told the contract will be signed later this week." In a subsequent interview, Hartfield confirmed that questions regarding contract process issues involving AON and Gallagher had not been brought to him prior to work being initiated.

2. THE BH BOARD OF COMMISSIONERS ADDRESS GALLAGHER

In the April 24, 2018 BH Human Resources Committee meeting minutes, Commissioner Wellins stated his intent to have two consultants, one legal and the other benefits, address the May 15, 2018 Human Resources Committee. Following the presentations, if the Committee agreed with the consultants suggestions, a recommendation could be made at the May 30, 2018 Board of Commissioner's meeting. Santorio stated that an outside expert could be brought to the meeting, but he noted the information is "literally public and on the internet." In clarifying he was not opposed to hiring a consultant, Santorio thought a better use would be to review specific items being presented, like compliance with the CIA or the management team's plan, which would cost \$20,000 rather than \$200,000. Commissioner Wellins clarified that the consultant

would not be creating metrics, but providing guidance regarding them and issues like percentage weights, for the Human Resources Committee to evaluate. Santorio asserted that the work could be done internally, but if independence was the issue, he believed it was appropriate.

The May 30, 2018 Human Resources Committee meeting again covered the consultant arrangement concept. It was clear from the IRO's review that Commissioner Wellins had asked for the contract and scope of work and neither had been provided to him. At the meeting, Commissioner Wellins, wanting to be on the record, asked for a resolution for the Human Resources Committee to expressly not give the authority for BH to pay any money related to a comprehensive benefit study because he had been assured that no work had been done and no money was owed. Capasso stated that she did not think they had produced anything. Santorio stated a large portion of the work had been done, but no promises had been made. Barrett stated if representations had been made and relied upon, BH could possibly be sued. Goldsmith stated that Nyamora discussed it with him, Goldsmith made the call to go forward, and the team agreed.

**I. DOCUMENTATION OF INTENT TO CIRCUMVENT BROWARD HEALTH
ARRANGEMENT POLICIES AND PROCEDURES AND THE TERMS OF CIA**

**A. FAILURE TO FOLLOW THE BROWARD HEALTH CONTRACT
APPROVAL PROCESS AND ITS IMPLICATIONS**

Under the BH Compliance and Ethics, Corporate Integrity Agreement Policies and Procedures applicable to Focus Arrangements, Nyamora was acting as the Responsible Executive and Drakeford and Cohen were acting as the Contract Initiators for the contracts with Gallagher and AON, respectively. Despite the significance of the role of the Contract Initiator, particularly after BH was operating under a CIA, Nyamora and his staff, including Drakeford and Cohen, failed to acknowledge and meet the obligations placed on the Contract Initiator and failed to follow BH's Focus Arrangements Policies and Procedures and meet the Focus Arrangements Requirements described in Sections III.D.1 and III.D.2 of the CIA, regarding certain arrangements with Gallagher and AON.

**B. HUMAN RESOURCE DEPARTMENT'S DISREGARD OF
OBLIGATIONS CREATED BY THE CORPORATE INTEGRITY
AGREEMENT**

The timeline of the initiation of the various arrangements must be considered in relation to the timeline of BH's execution of the CIA and BH's subsequent development and implementation of Compliance Policies and Procedures and the provision of education and training to BH Certifying and Sub-Certifying Employees to ensure compliance with the Focus Arrangements Procedures and the Focus Arrangements Requirements described in Sections III.D.1 and III.D.2 of the CIA, and Section C. 1-6 of Appendix B of the CIA.¹⁹

**C. BROWARD HEALTH'S SENIOR MANAGEMENT'S FAILURE TO
COMPLY WITH THE IRO'S PRODUCTION REQUEST**

On June 29, 2018, the IRO issued a Document Request regarding AON and Gallagher to BH. In preparing the response, the IRO understands that those responsible at BH for ensuring the production was made, emailed individuals, who would likely have documents to produce requesting them to provide relevant documents. If nothing was produced, a second email was sent to the identified individuals to obtain documents. Capasso did not produce any records. In fact, she apparently failed to respond to either email request. Nyamora produced four documents, three one page "documents" from the AON company overview, the BH CEO 2018 Total Remuneration document, and CEO Compensation to AON. The fourth document was the BH CEO 2018 Total Remuneration document in its entirety. Goldsmith internally produced a few irrelevant binders regarding BH insurance programs. As set forth in the analytical chart, the IRO identified, from the production made by BH as an entity, an universe of documents likely to

¹⁹ The Effective Date of the CIA was August 31, 2015. In November 2015, BH adopted Compliance and Ethics, Corporate Integrity Agreement Policies and Procedures applicable to Focus Arrangements.

have been available to Capasso, Nyamora, and Goldsmith, but were not produced. The IRO finds it a serious lack of cooperation - not unlike what it experienced in 2016 with the former senior management. The IRO knows, based upon interviews, references made in other documents, and common sense, that documents critical to its review were not produced by them and as a result, not reviewed. Should it be deemed appropriate, we leave it to the Board and the OIG to address it.

Emails Sent or Received by BH's Senior Management and Not Produced

	REC'D FROM CAPASSO GOLDSMITH NYAMORA	REC'D IN RESPONSE TO 6-29-18 IRO REQUEST	"QUERY" COLLECTION	REC'D IN RESPONSE TO 6-29-18 IRO REQUEST	"QUERY" COLLECTION	REC'D IN RESPONSE TO 6-29-18 IRO REQUEST	"QUERY" COLLECTION	TOTAL ²⁰
		Email From (Produced by BH or others)	Email From (Produced by BH or others)	Email To (Produced by BH or others)	Email To (Produced by BH or others)	Email CC/BCC (Produced by BH or others)	Email CC/BCC (Produced by BH or others)	Emails To/From/ CC/BCC
Beverly Capasso	0	0	17	2	51	1	7	78
Alan Goldsmith ²¹	0	2	94	6	249	2	133	486
Peter Nyamora	0	3	92	6	204	3	64	372

²⁰ Based upon Key Words, To List of Domains and From List of Domains collection searches, for which we do not know the terms or domains, we received 81,383 documents from Broward, post de-duplication. These documents are referred to as the "Query Collection" in the tables. Of the 81,383, 43,458 are emails, based upon filetype. We also received 1,624 documents in response to the June 29, 2018 IRO Request. Of these, 580 are emails, based upon filetype.

The tables above show the volume of email to/from/cc/bcc Beverly Capasso, Alan Goldsmith and Peter Nyamora. A to/from/cc/bcc search captures the sender/recipient of the last in time email.

Additionally, we searched the emails using search terms for Capasso, Goldsmith and Nyamora's names and email domains to capture emails where they were on the distribution lower down in the email chain or where they were mentioned in the body of the email. To account for overlap between the term search results and the to/from/cc/bcc results, we excluded the to/from/cc/bcc results from the term search results for each corresponding individual.

We excluded Marketing, Bulk, Automatic Reply, Social Network and Suspected Spam emails from all email searches.

We also searched non-email documents using search terms for Capasso, Goldsmith and Nyamora's names and email domains, to capture emails that may have been pdf'd, as well as other types of documents.

²¹ Alan Goldsmith produced a few insurance binders that were determined to be irrelevant.

Emails Containing Search Term/Domain and Not Produced

	REC'D FROM CAPASSO GOLDSMITH NYAMORA	REC'D IN RESPONSE TO 6- 29-18 IRO REQUEST	"QUERY" COLLECTION	TOTAL
		Emails containing a search term or domain (Produced by BH or others)	Emails containing a search term or domain (Produced by BH or others)	Emails containing Name / Domain (excluding To / From/ CC / BCC)
Beverly Capasso	0	24	124	148
Alan Goldsmith	0	21	573	594
Peter Nyamora	0	15	249	264

Document Containing a Search Term/Domain and Not Produced

	REC'D FROM CAPASSO GOLDSMITH NYAMORA	REC'D IN RESPONSE TO 6-29-18 IRO REQUEST	"QUERY" COLLECTION	TOTAL
		Documents containing a search term or domain (Produced by BH or others)	Documents containing a search term or domain (Produced by BH or others)	Documents containing a search term or domain
Beverly Capasso	0	79	1,957	2,036
Alan Goldsmith	0	23	747	770
Peter Nyamora	0	37	547	584

IV. THE IRO'S FINDINGS

A. DEFICIENCIES IN INITIATING AND IN INTERNAL REVIEW AND APPROVAL OF ARRANGEMENTS

The IRO finds that:

BH's systems, policies, processes and procedures for initiating Arrangements, including those policies that identify the individuals with authority to initiate an Arrangement and that specify the business need or business rationale required to initiate an Arrangement" CIA III. D. 1.e. and Appx. B, A.5

INTERNAL REVIEW AND APPROVAL OF ARRANGEMENTS

"BH's systems, policies, processes and procedures for the internal review and approval of all Arrangements, including those policies that identify the individuals required to approve each type or category of Arrangement entered into by BH, the internal controls designed to ensure that all required approvals are obtained, and the processes for ensuring that all Focus Arrangements are subject to a legal review by counsel with expertise in the Anti-Kickback Statute and Stark Law" CIA III.D.1.e. and Appx. B, A.6.

BH failed to comply with the Focus Arrangements Procedures and the Focus Arrangements Requirements described in Sections III.D.1 and III.D.2 of the CIA, with respect to such financial arrangements and those arrangements failed to meet the requirements of Section C. 1-6 of Appendix B of the CIA.

The deficiencies discussed in this Report are the same or substantially similar in nature to several deficiencies identified in the Arrangements Systems Review Report issued by the IRO on October 7, 2016 and November 30, 2017 including: 1) required documentation was not entered in the contract file of some of arrangements; and 2) contracts were executed prior to completion of all approval steps.

The IRO further finds that, Nyamora, as a Senior Vice President, a member of the BH Executive Management Team, and Certifying Employee, Drakeford, as a Vice President and Sub-Certifying Employee, and Cohen as an Assistant Vice President knew or should have known their responsibilities to comply with the Focus Arrangements Procedures and the Focus Arrangements Requirements described in Sections III.D.1 and III.D.2 of the CIA, with respect to such financial arrangements and that those arrangements were required to satisfy the requirements of Section C. 1-6 of Appendix B of the CIA. They failed to meet these responsibilities and they either ignored or actively sought to circumvent the CIA Focus Arrangements Procedures and Requirements and the BH Compliance and Ethics, Corporate Integrity Agreement Policies and Procedures applicable to Focus Arrangements. The IRO is aware that, as set forth under BH Policy GA-004-23, failure of a BH Workforce Member to

The Honorable Nancy Gregoire
Broward Health
July 23, 2018
Page 24

comply with BH's Corporate Compliance and Ethics Requirements may result in potentially serious disciplinary action.

BH adopted its Compliance and Ethics, Corporate Integrity Agreement Policies and Procedures to serve as internal controls in order to ensure compliance with the CIA requirements. The Compliance and Ethics, Corporate Integrity Agreement Policies and Procedures applicable to the financial relationships described in this report include Policy No: GA-004-441 Physician and Non-Physician Financial Arrangement Review, Approval, Tracking and Monitoring. The policy is a part of the BH Compliance and Ethics Program's policies and procedures. The purpose of the Compliance and Ethics Program is to establish meaningful controls that specifically address the risk of violations of law and non-compliance. Here, it is regrettably clear that BH's senior management has failed to do so.

Sincerely,

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, PC



J. Scott Newton

JSN:llt

Attachments

cc: Laura E. Ellis
Amanda Copskey
Lynn M. Barrett
Nicholas L. Hartfield



EXHIBIT E

BAKER DONELSON



TO: Board of Commissioners of the North Broward Hospital District
FROM: Executive Management
DATE: August 15, 2018
RE: Action and Response Memo
– Baker & Donelson IRO report on consulting arrangements

At the July 2018 meeting, the Board tasked executive management with three items relative to the report issued by Baker & Donelson on July 23, 2018.

- 1) Take those actions management believed appropriate relative to the findings in the report which management agreed with on a factual basis.
- 2) Correct the record relative to factual errors in the report – ‘identify what is accurate and what is not’.
- 3) Assist the Board in identifying actions which the Board would be left to deal with after the above two tasks were complete.

Here we were asked to ‘separate the wheat from the chaff’ relative to footnotes which by a writing style implied ‘by innuendo’ that some action might be required rather than through straight forward language. The Board requested our input as to those matters that might later need to be referred to an outside attorney with an independent mindset for advice as well.

We are just as uncomfortable as the Board was relative to item #3 as it requires us to interpret the words of authors, however we will aspire to do this in a spirit of intellectual honesty. It is our belief that the fact that there was a need to request that management perform tasks #2 and #3 above indicate a need to improve the process for future interactions between senior management, and the compliance and legal departments with Baker and Donelson as they fulfill their role as an Independent Review Organization employed by Broward Health.

We will provide a more complete set of process improvement suggestions later in our report however we feel the need to clarify a few matters at the outset:

- We are not challenging the motivations or independence of Baker Donelson in this report. In fact, we believe that their professional experience within the framework of performing the role of Independent Review Organization can provide value to Broward Health beyond merely complying with the requirements of the Corporate Integrity Agreement. We will include suggestions in the process improvement section relative to communication which we believe will allow Broward Health to obtain even more value from the work of Baker Donelson without jeopardizing independence.

- Management had requested an opportunity to review a draft of the Baker and Donelson's IRO report before it was issued and believe that had that step occurred we might have avoided the current need to perform tasks 2 and 3. These two tasks place executive management in the uncomfortable position of pointing out factual errors after the fact rather than providing the IRO an opportunity to have issued a 'clean' report to begin with. This also places executive management in the unwelcome and unnecessary position of appearing defensive or 'throwing shade' after the report has been issued rather than giving our input in a collaborative manner prior to its issuance.
- The Board had discussed the shared responsibility for compliance between operational management, the Director of Compliance and the General Counsel at the meeting. We agree and liken it to a three-legged stool with a shared responsibility for success and failure. The Director of Compliance had reported on substantial improvements in control procedures especially those related to contracts over the past year earlier in the July meeting. He noted that the CFO had put in place controls which prevented payment for goods or services for which proper contracts were not in place and so caused a red flag to be raised on arrangements which were not compliant with procurement policy over the past year.

The Compliance Director also reported upon the six- day- a- week effort to get all contracts into the Compliance 360 software program and noted that this was being done in a collaborative manner by Finance with assistance from his group. The goal established was to concentrate of those procurement contracts related to "focus arrangements" with a goal of getting all of those into the system by the end of August. There will be further time and effort needed later to ensure that contracts not falling into the "focus arrangement" category are also put into the system through the same process along with contracts in the 'letter agreements' category.

We feel that the report could have given a clearer picture had it noted the controls put into place and the progress made related to contract documentation within Compliance 360 over the past year in a collaborative manner. The narrow focus of the current report on problems identified related to a small number of non- "focus arrangement" procurement related issues and the stylistic issues noted during the Board discussion could cause a uniformed reader to think that the three legs of Broward Health's compliance stool had not been diligent over the past year. We trust that was not the intent of the IRO.

- The report draws inferences on the overall state of internal controls and compliance at Broward Health which include statements such as "substantive and pervasive issues" and "systematic institutional deficiencies in failures in compliance with these systems..." We have inquired about the genesis of this project and its overall scope but have not received further clarity.

We are therefore not aware of any scientific basis for supporting statements that the work done by Baker Donelson while producing the current report can be said to allow statistically valid conclusions to be drawn regarding anything other than those related to the five non-focus arrangements reported upon. For example, we are not aware of any random sample selection techniques applied nor any work done to assure that the sample size in relation to the overall population of procurement agreements can objectively support the scientific validity of applying any conclusions to matters beyond the five non-focus arrangements.

That said, there were matters brought to management's attention through the report which required remedial actions and others which caused management to take some appropriate disciplinary actions.

The matters raised in the Baker Donelson report are summarized below to orientate our responses to them:

Overview of Findings:

The IRO reported on a narrow group of procurement arrangements in its July 23rd report

- 1) Reliance Standard Life Insurance
- 2) Aon Consulting, Inc.
- 3) Gallagher Benefit Services, Inc. - Integrated Healthcare Strategies
- 4) Gallagher Benefit Services, Inc. - Insurance Point
- 5) Chard Snyder

The IRO reported non-compliance on each of the above procurement arrangements. It is unclear to us from the report or our interactions with the IRO during our interviews with them if a wider group of procurement arrangements were analyzed or if the work of the IRO had been specifically targeted solely to these 5 procurement arrangements at the outset.

Additionally, the report of the IRO contained a section which reported it "documented intent to circumvent Broward Health arrangement policies and procedures and the terms of the CIA" in three areas

- 6) Failure to follow the Broward Health contract approval process and its implications
- 7) Human Resource Department's disregard of obligations created by the Corporate Integrity Agreement
- 8) Broward Health's senior management's failure to comply with the IRO's production request.

Finally, there were contained in sections related to the 5 procurement arrangements and in the footnotes, which indicated that:

- 9) It was Baker Donelson's sense that there had not been full cooperation.
The IRO in footnote 4 of the report, indicated that the IRO should expect complete cooperation from BH's senior management in ensuring availability of employees for interviews.
- 10) The report references a "purported negotiation" of the CEO's contract which while not making an allegation implies that there was something untoward about the salary amount or contract terms.

Footnote 10 of the report states "Interestingly, based upon a review of legal bills submitted by outside counsel the work included a review of Capasso's contract and communications with Nyamora. The outside counsel does not appear to have been involved in the negotiation. We (perhaps incorrectly) read the word "interestingly" in this context to be pejorative.

- 11) It “leaves a determination” to General Counsel, Chief Compliance Officer and the Board if an employee was authorized under the Broward Health procurement code to have “approved” a \$10,000 payment to AON in a footnote 18 of the report.

Below are management’s responses to the 11 items noted above:

1) Reliance Standard Life Insurance:

The Baker Donelson report indicates that the arrangement with Reliance Standard Life Insurance Co. did not go through the appropriate process in compliance with our CIA and policies and procedures. The “IRO finds Goldsmith executing the Reliance renewal, which he knew or quite easily should have known had not gone through the CIA-required contract process, constitutes a complete disregard of the CIA-required contract process”.

Senior Management believes that this statement is factually incorrect and that the Reliance Standard Life Insurance procurement did in fact go through the proper CIA-required contract process and the focus review assessment was in the file when the CFO, Alan Goldsmith reviewed and approved it. Below screenshot from the Compliance 360 system:

Do the services under the arrangement meet the definition of a Covered Person?

No

Is this Arrangement considered a Focus Arrangement?

No

Focus Arrangement / Covered Person Assessment Status

Complete

Focus Arrangement Comment

This arrangement was reviewed through Meditract on 07/04/2017 before the transition into C360.

BH is renewing agreement with Reliance Standard Life Insurance Company (LTD/STD/GL/SR) to provide BH employees STD, LTD, Group (Life/AD&D), Group (Supp Life/Dep Life), SR (Business Travel Accident) through Insurance Point/Gallagher Benefits

Services/Medassets proprietary program. There is also an agreement with Reliance to provide dental and vision benefits for BH employees.

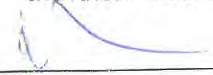
There are no other agreements with Reliance in MediTract or Ariba.

Reliance is registered in VRS. and answered No to all questions in Section 4.

Reliance is not an actual source of health care business or referrals nor is it owned, in whole or part, by a physician or an immediate family member of a physician who makes referrals to BH. Reliance and the services being provided do not meet the definition of a Covered Person

Additionally, the contract was signed by Goldsmith on November 11, 2017, not November 1, 2017 as the IRO reports (we believe this may have simply been a scribe's error, but for clarification purposes, it was in fact November 11th, not the 1st. See screenshot below:

- ☒ B - We agree to renew the Broward Health Dental and Vision plans, with the alternate Vision plan, at the rates noted above, until 1/1/2019.


Policyholder Signature

Alan Goldsmith

11/11/17
Approval Date

Within the backup documentation provided by the IRO there is an e-mail from Chief Compliance Officer Hartfield stating that agreements cannot be executed without going through our contract process. This was slightly perplexing to us at the time, as we believed it did go through the process and was signed on the same day that Hartfield sent the e-mail. We believed this was simply a miscommunication as we were not aware at the time of that Mr. Nyamora may have already executed it. As such, with the information we had at hand, we simply thought this was a miscommunication; this contract went through Compliance. Further, in Hartfield's e-mail, he noted that if it was not a focus-arrangement as defined in the Corporate Integrity Agreement and certain Broward Health Policies and Procedures. As noted, this is not a focus arrangement.

However, based on the information we now have showing Nyamora's 10/25/2017 version of the agreement, management is taking actions indicated below under action items.

2) AON Consulting, Inc.

We concur with the IRO assessment that the AON Consulting arrangement seems to have a scope of service that relates specifically to the employee health plan benefits. The IRO report concluded that the Human Resources Department used the same AON Consulting agreement as the basis for paying for work done in connection with the CEO contract compensation/benefits comparison work. Senior Management is addressing this as delineated below in action items.

Additional scope negotiated by HR and AON outside of the approved process is likewise addressed below in action items.

3) Gallagher Benefit Services, Inc. - Integrated Healthcare Strategies

4) Gallagher Benefit Services, Inc. - Insurance Point

We concur with the IRO assessment that certain facts related to the procurement process and scope of work completed had been mis-represented to members of the Board and the CEO.

As well known to the Board, the work scope arranged with Gallagher was going through the appropriate process; however, Gallagher refused to sign the contract due to objections to standard Broward Health contract language. Additionally, there was an honest misunderstanding at the outset between a Board member who had requested only a portion of the scope of work being arranged through Gallagher and members of the senior management team who believed the scope requested was larger and were trying to get it accomplished under what was initially a very tight time frame.

It would have been in management's purview to contract for additional scope beyond the Board member's request for management's own purposes at additional cost. Gallagher Benefit Services are expert in the field and we understand that there was a competitive procurement process although few firms could perform under the original time frame. Had management decided to expand scope after the Board member raised the issue that it was beyond his request this would be proper if based on management's own decision-making process regarding what it saw as to the cost-benefit of having the larger scope performed.

The Board member had expressed his displeasure on seeing his name in the report at the July meeting. We think it important to point out that there are no allegations in the IRO report or by us here that the Board member interfered in the procurement process. Rather, management

independently put a hold on the procurement process and deferred the decision as to whether to go forward.

That said, we do concur that the amount of work performed prior to the contract language being agreed upon had been mis-represented to the Board as well as to the CEO. Additionally, we agree that this places Broward Health at the financial risk of potentially either having to pay for the incomplete work product or forcing a business decision to have the expanded scope of work completed. Neither outcome is optimal and management will need to weigh the current cost / benefits of each to make a business decision in the best interest of Broward Health.

The issue regarding mis-representations to the Board and CEO are serious and senior management addressed this as reported below in the action items.

The IRO report includes a related section entitled “Beverly Capasso’s Representations to the BH Commissioner Steven Wellins that she had investigated the Gallagher consulting agreement” which contains a statement “The IRO came to only ‘one’ conclusion which was that either no investigation was done or that an investigation was done and Capasso realized that senior management violated the CIA.”

We would like to clarify any doubts on this point. Ms. Capasso interviewed Mr. Nyamora prior to those conversations and asked if any work had been done and for a status update. She was told that no work had been initiated and that they had been working through the contract language process; however, the contract stopped because they could not come to an agreement.

Ms. Capasso learned later from Mr. Santorio, that some work had been started. Ms. Capasso met with Mr. Nyamora on the following day to question the inconsistent information. At that time, Mr. Nyamora said he thought the questions at the Board’s meeting were related only to a final work product. Ms. Capasso counseled Mr. Nyamora and memorialized to file.

The Gallagher arrangement is not a “focus arrangement” as defined in the Corporate Integrity Agreement.

5) Chard Snyder

As reported in Footnote 1, “The financial arrangement with Chard Snyder was identified in a recent interview as not having complied with the CIA-required contract process. So, it has not been reviewed. For now, we leave it to the board and/or outside counsel to address.”

While the IRO suggested leaving to the board and or outside counsel to address, we believed as Executive Management that we should address this. This arrangement was entered into Compliance 360 on May 17, 2018 at 12:12 pm, triggering the process for a focus arrangement review on June 20, 2018 at 4:13 pm. The focus arrangement review was completed on June 22, 2018 at 9:20 am. It was deemed to not be a focus arrangement, or a covered person as defined in the Corporate Integrity Agreement. The arrangement’s proposed start date was July 1, 2018 however the arrangement did start before it was fully executed. It was not a focus arrangement or covered person under the Corporate Integrity Agreement.

However, starting the services prior to an executed contract, absent extending circumstances is not an acceptable practice. Appropriate reeducation and progressive disciplinary action have been completed as further explained in the action items section.

6) Failure to follow the Broward Health contract approval process and its implications

This section draws reference to findings related to items 1 through 5 above but are addressed separately again in the IRO report. It may be that we are not correctly interpreting the author's intent and so we will likewise address this as a separate issue:

While we concur (see above) with the Baker Donelson report specific to the procurement processes as performed by members of Human Resources and have taken actions relative to them, they are not "focus arrangements" under the Corporate Integrity Agreement.

7) Human Resource Department's disregard of obligations created by the Corporate Integrity Agreement

Similarly, to 6 above, this section draws reference to findings related to items 1 through 5 above but are addressed separately again in the IRO report. As in 6, we may not be correctly interpreting the author's intent and so we will likewise address this as a separate matter.

As above, we concur on several failures cited in the IRO report specific to the procurement processes as performed by members of Human Resources and have taken actions relative to them, however they are not "focus arrangements" as defined in the Corporate Integrity Agreement.

8) Broward Health's senior management's failure to comply with the IRO's production request.

The IRO report represents that Peter Nyamora, Beverly Capasso and Alan Goldsmith failed to produce the appropriate documents as requested by the IRO. Backup schedules are provided showing the number of e-mails produced by these individuals relative to the matters covered in the production request (between 0 and 3) and the total e-mails discovered through keyword system queries (between 78 and 486)

The report also includes a conclusion that "the IRO finds a serious lack of cooperation – not unlike what it experienced in 2016 with the former management. The IRO knows, based upon interviews, references made in other documents and common sense that documents critical to its review were not produced by them and as a result were not reviewed. Should it be deemed appropriate, we leave it to the Board and the OIG to address it."

We feel certain that Baker Donelson did not know the facts when this statement was written and had we been given an opportunity to review a draft version of the report, we would not be in the position of correcting the record relative to factual errors in the report after it was issued. This will be addressed within the process improvement section.

The fact that management produced almost no e-mails independently is in reality a reflection of the fact that they wanted to ensure that none were missed. The volume of e-mails received by senior executives in a healthcare system with 8,000 employees and 2,000 physicians is quite daunting. For this reason, after receiving the request to produce, Mr. Goldsmith sought counsel from General Counsel Barrett noting that it would be nearly impossible for senior management to be sure that they had fully complied with the request.

This was especially true because the initial communication through the Compliance group did not include the actual request from the IRO and indicated an even broader scope than the IRO

had requested. Mr. Goldsmith asked the advice of Ms. Barrett in an abundance of caution to ensure that nothing was missed, hence, to avoid the appearance of non-compliance.

Ms. Barrett agreed that there would be more surety that the request to produce was fully met if the legal department worked with Lucia Pizano and IT to run a query of all electronic information related to the IRO request. Goldsmith communicated this directive to other senior management for consistency. Some information was manually submitted despite this for two reasons. First, there were printed hard copies that were not electronic, and secondly some information had already been printed prior to the discussion with Ms. Barrett.

After reading the issued report, Ms. Capasso sent an e-mail on July 24, 2017 to Ms. Barrett, copying Scott Newton of Baker Donelson and Alan Goldsmith, to inform Mr. Newton of the agreement with Ms. Barrett who had informed senior management that they would not need to individually produce e-mails since IT could better produce these on their behalf. Unfortunately, at that point the horse was already out of the barn.

9) The footnote 4 of the report related to expecting complete cooperation

The IRO in footnote 4 of the report, indicated that the IRO should expect complete cooperation from BH's senior management in ensuring availability of employees for interviews. Senior management believes that it fully cooperated despite the request for interviews being made to them on an extremely short time frame.

Senior Management e-mailed the IRO with available dates and times. The IRO interviews were then coordinated through Compliance and senior management believed the interviews were to occur on Tuesday, July 17, 2018 because the Compliance assistant, Jennifer Mosely had put holds on their calendars for meetings with the IRO on that day and they had accepted the calendar invitations.

Further, those time slots remained on the calendar into Tuesday, July 17, 2018. Mr. Goldsmith and Mr. Santorio subsequently heard that the IRO might not be available during those times and provided alternative times but were then informed through Compliance that the IRO would not need to meet with them.

Eventually, on Tuesday, July 17th, 2018, Beverly Capasso e-mailed Scott Newton of Baker Donelson and discovered that there had been unintentional miscommunication through the intermediary in Compliance. Ms. Capasso notified Mr. Newton that she had not been informed that the IRO was not available at the Tuesday timeslot on her calendar. At the same time, she noted that the senior management team (excluding Mr. Nyamora who was out of the country) would make themselves available at a time convenient to the IRO later in the week. Subsequently the interviews did in fact take place that same week, on Thursday.

We note that the request for interviews was made on very short notice and that the senior management team made themselves available despite that challenge. Also, in fairness to Baker Donelson, since an intermediary was used to request the interviews – perhaps the IRO had originally made their request for interviews with these busy executives earlier and under a more reasonable time frame than is currently known to management. The communication and scheduling processes which failed in this instance will be addressed in the process improvement section.

10) The “purported” negotiation of Ms. Capasso’s contract

We believe that the language used in this section and implications made are unwarranted and may simply be in the report as result of the IRO not being fully briefed on the facts.

For this reason, we will restate matters we believe are well known to the Board but quite possibly not known by the report’s authors:

- Ms. Capasso did not seek either the interim CEO position she took in May of 2017 nor the permanent CEO role she took in 2018. In both instances the Board of Commissioners reached out to Ms. Capasso for these positions.
- When she agreed to take on the permanent CEO role, representatives of Broward Health including the General Counsel, Human Resources Department and a designee of the Board developed a contract which they presented on behalf of the health system to Ms. Capasso. To the best of Ms. Capasso’s recollection, she did not propose any changes to the contract proposed by Broward Health aside from her suggesting a reduction in the proposed base salary amount of \$852 thousand to \$750 thousand. The point here is that whatever terms the contract contained however favorable or unfavorable, Ms. Capasso did not come up with such terms.
- Footnote 10 of the report states “Interestingly, based upon a review of legal bills submitted by outside counsel the work included a review of Capasso’s contract and communications with Nyamora. The outside counsel does not appear to have been involved in the negotiation”. We are certain that there would be less ‘interest’ if Baker Donelson had been made aware that review by an outside labor law specialist was a last step requested by the Board designee as an additional caution beyond the review by General Counsel.
- We are confident that the report would not have included language implying that there might be something untoward in the contract if the IRO had been informed:
 - As reported by a Board member in the July meeting after performing his own diligence review of the contracts of previous CEO’s that the overall format of those were very similar (though some language changes were made) to the contract presented to Ms. Capasso by Broward Health.
 - Of the compensation of the two most relevant comparable positions. Concerns are expressed in the report about the validity of comparables used in determining the market value of the position. The IRO is probably unaware of the compensation of the two positions most comparable to the CEO of Broward Health; those of comparable public health systems in the same geographic market of South Florida.
 - The CEO of the Jackson Memorial Health system is reported to receive a base salary of \$830 thousand, or \$80 thousand higher than the CEO of Broward Health.
 - The CEO of Memorial Health system is reported to have a base salary of \$790 thousand, or \$40 thousand higher than the CEO of Broward Health.

- It is more complex to judge the potential payout of incentive plans for each of those individuals as it would require probability assumptions regarding the achievability of percentage payout of target bonuses and in the case of the Memorial CEO includes a mixture of short term and long-term plans. However, we believe the potential overall incentive payout discussed in the meeting in which Ms. Capasso's contract was ratified is not dissimilar (with admittedly non-granular visibility) to the potential payouts of these CEOs
- Both other CEOs are eligible for pensions and other benefits which the CEO of Broward Health is not eligible to receive upon completion of the current contract's anticipated term. These have substantial value.

We are sanguine in our belief that the IRO report would not have referenced "purported negotiations" had they been briefed that the result of the only item negotiated by Ms. Capasso (a suggestion of a \$750 thousand base rather than the higher amount first discussed with her) placed both her base pay and overall compensation below that of the other two public health system CEOs in the region.

All three of these individuals receive compensation packages which are below those of their "for-profit" counterparts in the region.

11) Footnote 18 which "leaves a determination" to General Counsel, Chief Compliance Officer and the Board if an employee was authorized under the Broward Health procurement code to have "approved" a \$10,000 payment to AON and related Footnote 2 which notes "Oddly" this individual is not listed as a sub-certifying employee on documents reviewed by the IRO.

Senior Management will work collaboratively with Compliance to review and address as appropriate, because Compliance determines who should be considered a sub-certifying employee.

Overall inferences drawn:

The IRO's report dated July 23, 2018 regarding consulting services and financial arrangements identified 5 alleged arrangements that did not follow CIA-required systems, policies, procedures and processes. Additionally, the IRO reported that Broward Health has "substantive and pervasive issues" and "systemic institutional deficiencies in and failures in compliance with these systems..."

As noted at the top of our response we do not feel that this statement fairly presents the substantial improvements in control procedures especially those related to contracts which occurred over the past year as reported to the Board by the Director of Compliance during the July meeting.

This is especially disheartening to a group which came in a year ago and worked very hard to both address issues raised in earlier reports of the IRO and from their own experiences gained within a wide swath of well-regarded healthcare organizations with strong controls. The CFO has established controls which did not exist a year ago to prevent payment for goods or services for which proper contracts are not in place. We now have a control in place which causes a red flag to be raised on arrangements which are not compliant with procurement policy. This was instituted during the past year.

The compliance software of the past has been replaced and additional staff hired to assure stronger controls. There is an on-going six- day- a- week effort to get all contracts into the Compliance 360 software program. This is being done in a collaborative manner by Finance with assistance from Compliance. We have a common goal of getting all “focus arrangement” contracts into the system by the end of August. Later there will be further time and effort needed to ensure that contracts not falling into the ‘focus arrangement’ category are also put into the system along with contracts in the ‘letter agreements’ category.

We reiterate our earlier comment that the report could have given a clearer picture of the existing situation had it noted the controls put into place and the progress made related to contract documentation within Compliance 360 over the past year. Everyone involved in these efforts is deflated by comments that there continue to be “substantive and pervasive issues” and “systemic institutional deficiencies in and failures in compliance with these systems...”

Pervasive is defined as “spreading widely throughout an area or a group of people”. After having had an opportunity to fully review the report we’d ask the IRO to consider if this characterization of the overall system in the context of a report based on a very small sample of 5 non-focus arrangement procurement samples is representative of the overall state today, versus a year ago.

Since January 2018, we have entered over 1,700 (focus and non-focus arrangements) through the Compliance 360 process compliant with our policies and the Corporate Integrity Agreement. If the IRO’s findings are accepted as fully correct in terms of the 5 non-focus arrangements specifically targeted in this investigation, that would equate to less than 1/3 of 1% of the total contracts currently within Compliance 360 and 0.0% of the total “focus arrangement” contracts.

The IRO report identifies Policy No: GA-004-441 Physician and Non-Physician Financial Arrangement Review, Approval, Tracking and Monitoring as being applicable to the review, and further mentions that Section IV. B of the policy “sets forth the requirements of BH’s Referral Source Contract Development and Review Process.” However, we should point out that none of the 5 arrangements discussed in the report are referral source arrangements or focus arrangements.

This same conclusion - that none of these arrangements is a “focus arrangement” as defined in the Corporate Integrity Agreement is contained in an e-mail from the Compliance Officer of November 11, 2017 referenced in the report.

The actual definition of Focus Arrangements contained in the Corporate Integrity Agreement is as follows:

“Focus Arrangements” means every Arrangement that:

- a. is between NBHD and any actual source of health care business or referrals to NBHD and involves, directly or indirectly, the offer, payment, or provision of anything of value; or
- b. is between NBHD and any physician (or a physician's immediate family member) (as defined at 42 C.F.R. § 411.351)) who makes a referral (as defined at 42 U.S.C. § 1395nn(h)(5)) to NBHD for designated health services (as defined at 42 U.S.C. § 1395nn(h)) (6)) ...”

None of the 5 contracts discussed in the current report is between Broward Health and an actual source of health care business or a referral source or a physician.

That said, we do not challenge the fact that the IRO should operate independently and appreciate that there were issues raised to management's attention regardless if they are in the purview of the review of focus arrangements as defined in the Corporate Integrity Agreement. We appreciate and rely on the extra sets of eyes monitoring overall compliance in the Compliance Department, Internal Audit Department, and the Independent Review Organization. These efforts are essential and provide some 'sleep at night' comfort to management in exercising its responsibilities to the taxpayers, bondholders, and the Board.

Action Items:

Senior Management has a process for ensuring focus contract compliance with the CIA. Further, we have extended this process to non-focus arrangements despite these arrangements being outside of the purview of Focus Arrangements as defined in the Corporate Integrity Agreement.

The day-to-day management process implemented, as consistently communicated, is to educate staff on our processes and policies, identify compliance failures and re-educate, identify and implement further process improvement opportunities or, if required, take progressive disciplinary actions for repeated failures. There are monthly compliance meetings, twice-weekly contract meetings, remuneration checks and balances and frequent audits which serve to further ingrain a culture of compliance into the Broward Health System.

In accordance with these management processes, we are holding people accountable and have applied varying degrees of the progressive discipline continuum related to 3 staff members mentioned in the report. We feel it inappropriate to discuss individual employees within this report but have briefed Board members on a one to one basis.

Improvements to the Process

We ourselves are not challenging the motivations or independence of Baker Donelson in its role as Independent Review Organization in this report. However, that is currently being questioned in a civil action against Broward Health by a former CEO. Additionally, some of the employees involved in procurement or involved in the massive effort to document all contracts in Compliance 360 have approached us over the past weeks concerned that an error may land them in the next report or cause them to lose their job. Obviously, we tell them that no one expects a human being to never make a mistake and we only expect diligence and for people to ask questions when they are unsure.

However, we would like to work proactively with the IRO to make process changes to both improve the processes, speed ultimate full compliance and exit from the Corporate Integrity Agreement, and dispel any perceptions that the IRO takes sides.

Unfortunately, as in the case of Caesar's wife, it's not enough simply to be virtuous. Pains must be taken to ensure that no one can perceive anything but virtue.

For these reasons we propose:

1. That communications from the IRO to management and from management to the IRO be direct rather than through intermediaries. We firmly believe that effective compliance is like a three-legged stool and that Compliance, Legal and Operations jointly share the responsibilities and praise on success or criticism on failure and do not suggest this to

exclude our colleagues however many of the issues we report today seem to have communication as the root cause.

2. That management be given the opportunity to review future reports in draft form to avoid being in the position as today of making comment after the fact. This is a standard practice in most internal control and compliance reporting processes.
3. That management immediately be informed of any matters raised to Compliance or the IRO to allow speedy actions to evaluate and to mitigate if appropriate through re-training or taking other appropriate actions both to improve process efficiency and eliminate any perceptions of a retrograde motion within Broward Health to a “gotcha” mentality. Our employees deserve to know that any such problems associated with the ‘Old Broward Health’ no longer exist.

We questioned ourselves as to if this would possibly compromise the independence of the IRO or Compliance and do not believe it would. There is no reason that a future report can’t state both a problem investigated, and corrective measures taken as a result.

4. That the Baker Donelson work cooperatively the Broward Health management to schedule meetings with Broward Health management and staff with adequate lead time. In the current instance we are under the impression that the request for “interviews” was less than one week before the requested dates. The scheduling of meetings with the the management of one of the 10 largest health care systems in the nation should be done on longer lead times to avoid scheduling conflicts. We would like to work cooperatively with Baker Donelson in its role as service provider to Broward Health to assure scheduling meets the needs of both Broward Health management and staff and Baker Donelson.
5. Board members expressed their opinions that the issues raised in the current report seemed to indicate good people trying to do the right thing but getting ahead of the required compliance processes in the interest of speed. Earlier in the same meeting, some of the Physician presentations included discussions expressing frustration with the length of the internal contracting process.

We believe that this would be a great opportunity to utilize continuous improvement experts to map out the current contacting processes from beginning to end with the mission of eliminating wasted steps, improving efficiencies and identifying proper metrics to manage the end-to-end contract process on an ongoing basis.

Service Level Agreements should be established related to turn around times for services provided by all involved including procurement, legal and compliance. This will involve understanding customer expectations from the contract requestors – what turnaround time is acceptable – 2 hours? 1 day? 3 days? A week? There may be benchmarking information available to assist in defining what excellent customer service looks like in contract process administration.

Those discussions will lead to the next step of clearly defining the needs of the service providers in procurement, compliance and legal from their customers requesting the contacting services to be able to meet the service levels expectations as defined.

Finally, fully transparent performance metrics and reporting should be instituted to allow all informed to see:

- the status of a given contract such as one might track a FedEx delivery
- exception reporting – contracts 5 days overdue, contracts 15 days overdue, etc.
- customer satisfaction measurements and trends with subgroup reporting by requestor group and service provider group

Once these measures are in-place, a robust escalation process can be instituted so that contracts critically past due are handled appropriately.

In conclusion, we would like to thank the IRO for its work and the Board for its faith in us to act and report back.

We understand that, just as we felt there were factual inaccuracies in its report, the IRO may not agree with all the facts or conclusions contained in this report.

However, we suggest that the best way to demonstrate to all stakeholders that this is not the “old Broward Health” would be to avoid a written ‘he said / she said’ exchange but rather for Broward Health management to sit down together with Baker Donelson and discuss any remaining differences in a collaborative manner.

We respect the professionalism of the individuals involved from Baker Donelson and see this as an opportunity to improve communication. Management believes if we jointly set a goal of avoiding leaving open items for the Board that this group can make that occur. If based on honest disagreement, we are unable after those discussions, to meet that goal and there are any remaining areas of disagreement, we can jointly report on those in a non-judgmental manner explaining any differences.

The only caveat we would propose is that this occur after the Budget process is completed during August and early September to avoid any impact to the statutory tax setting process.



EXHIBIT F

BAKER DONELSON



DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL

WASHINGTON, DC 20201



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October 19, 2018

VIA ELECTRONIC & REGULAR MAIL

Nicholas Hartfield
Vice President/Chief Compliance Officer/Privacy Officer
North Broward Hospital District
1800 N.W. 49th St.
Fort Lauderdale, FL 33309

Re: July 23, 2018 IRO Report; OIG Conversations with Individual Board
Members; Board Compliance Expert

Dear Mr. Hartfield:

I recently learned of certain actions taken or discussed by Commissioners of the Board for the North Broward Hospital District (which does business as Broward Health). I have some concerns and comments regarding those actions. Because of the importance of these matters to Broward Health's compliance with its CIA, I have copied the Commissioners and the General Counsel on this letter.

July 23, 2018 IRO Report

On July 23, 2018 the IRO issued a Report on Consulting Arrangements. It provided OIG with a copy. I normally review IRO reports as part of the Annual Report, so I can review the entity's response at the same time. Thus, I set aside the July 23, 2018 IRO Report to review with the Third Annual Report.

On September 25, 2018, I received a letter from Janet Gonzalez, Senior Executive Assistant to the General Counsel, on behalf of Lynn Barrett, the General Counsel. Ms. Gonzalez's letter contained an email from Ms. Gonzalez to the Commissioners. Included as attachments to the email were an email exchange between Commissioner Andrew Klein and Lynn Barrett that occurred between September 14 and 20, 2018 and a letter from Jesse H. Diner, an attorney with Buchanan Ingersoll & Rooney, P.C., to

Commissioner Klein dated September 21, 2018. After reading Ms. Gonzalez's letter, I read the IRO's July 23, 2018 report.¹ I also reviewed the charter and the bylaws of the North Broward Hospital District Board.

In his September 20, 2018 email to Ms. Barrett, Commissioner Klein wrote "it is my understanding that you have retained the law firm of McGuire Woods to conduct some sort of investigation relative to the flawed IRO report of July 23, 2018. No such investigation has been authorized by the Board of Commissioners and must therefore cease immediately." In his letter to Commissioner Klein, Mr. Diner explained that his firm is retained by Broward Health to advise, among other things, on governance. Mr. Diner wrote he had been provided the September 20, 2018 email to Ms. Barrett and spoken to Mr. Bittman, an attorney with McGuire Woods. Mr. Diner wrote that Mr. Bittman said that Commissioner Klein had called Mr. Bittman and "demand[ed] that his firm immediately cease investigation related to matters in the most recent report of the [IRO]." Mr. Diner explained that Florida statute only permits the Board to exercise its oversight authority as a whole, "not through the actions of any individual Commissioner." This requirement is also contained in the Board's bylaws. Thus, Mr. Diner advised, Commissioner Klein did not have the authority to demand "cessation of the investigation" being conducted by McGuire Woods.

Compliance and a compliant culture begin at the top of any organization. The Board of Commissioners sets the compliance tone for Broward Health. I am thus very concerned that an individual commissioner of the North Broward Hospital District, who also serves as the Chairman of the Board, would reach out as an individual to both the General Counsel and outside counsel to demand that outside counsel cease investigating matters raised by the IRO's report. My concern is heightened because the IRO's report mentioned Commissioner Klein individually in a discussion of what information about the proposed CEO contract for Beverly Capasso was and was not made available to the Board as a whole.²

OIG Conversations with Individual Board Members

As you and the Board know, on August 31, 2018 I spoke on the phone with Commissioner Gregoire and on September 5, 2018 I met in person with Commissioner Klein. Each commissioner asked to speak or meet with me and I agreed. As a general rule, I agree to speak or meet with anyone affiliated with an entity under a CIA I am monitoring. When Associate Counsel Matthew Westbrook and I visited Broward Health in February 2017 we offered the commissioners an opportunity to meet with us

¹ I will not make any comments on the substance of the IRO's report until after I have reviewed the response Broward Health submits with the Annual Report.

² The IRO's discussion appears on page 12 of the IRO's report.

individually, and each of those commissioners, including Commissioner Ure and former Commissioner Beverly Capasso, accepted our invitation. I view these conversations as opportunities to informally learn more about the entity and to provide education on the CIA and OIG's views on compliance. Reviewing Commissioners' Gregoire and Klein's September 12th comments to the Board about our conversations, I realized that some misunderstandings have arisen.

It was suggested that I am satisfied that Broward Health is making great progress overall. This is an overstatement regarding Broward Health's compliance with the terms of the CIA. I am very concerned with Broward Health's apparent inability to be in full compliance with the requirements of Section III.D of the CIA at the end of the Second Reporting Period. I received Broward Health's Supplement to the Second Annual Report, which responded to my questions about this and other aspects of the Second Annual Report, and I will be reviewing the Supplement soon.

It was also represented that one of my main points was the need for Broward Health leaders to work together. My point, which I may not have adequately conveyed at the time, is more nuanced. It is important for the Chief Compliance Officer to be fully integrated into the executive management team. Ideally, the executive management team works together to lead the organization, to communicate a tone at the top that considers compliance integral to good business and the provision of health care, and to model the importance of compliance in their work and with their employees. The Chief Compliance Officer's priority, however, is to advocate for and advise on behalf of compliance, including compliance with the requirements of the CIA, even if that means providing guidance or taking positions that may not always align with other members of the executive management team's views or positions.

Board Compliance Expert

During the September 26, 2018 Board meeting, the Board received a presentation from a consultant company, Strategic Management, about the services it could provide as a Compliance Expert to the Board. The Board then discussed the merits of retaining a Compliance Expert. Although it is not a requirement in the Broward Health CIA, some CIAs require Compliance Experts. These Compliance Experts develop a work plan, evaluate the effectiveness of the entity's compliance program, and provide a written report with their findings and any recommendations to the entity's board. The entity's board then utilizes the Compliance Expert's report as one (but not the only) source of information for executing its CIA-required resolution. Compliance Experts do not, however, advise on or evaluate an entity's compliance with the terms of its CIA or perform or evaluate the work of the IRO. During the period of the CIA, the Compliance Officer is responsible for the compliance program, including overseeing, implementing, and delegating (as appropriate) all compliance functions, and advising the entity and its

board on compliance matters. If, subject to these constraints, the North Broward Hospital District Board decides to retain a Compliance Expert, the OIG expects that, as the commissioners envisioned during their discussion, it will utilize the Compliance Expert's report as one of the sources of information for its CIA-required resolution. I will also expect Broward Health to include the Compliance Expert's Report in its Annual Report. Finally, if it retains a Compliance Expert, the Board must ensure that Broward Health has sufficient resources to provide information and documents to the Compliance Expert without causing any delay in responding to information and document requests from the IRO. If those resources are not available, the OIG expects Broward Health to prioritize requests from the IRO.

If you have any questions about this letter or the CIA, please call me at (202) 834-1665 or write or email me at the address above.

Sincerely,

A handwritten signature in black ink that reads "Laura E. Ellis". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

Laura E. Ellis
Senior Counsel

cc, via email only: Commissioner Andrew Klein, Chairman, North Broward Hospital District Board
Commissioner Ray T. Berry, North Broward Hospital District Board
Commissioner Nancy Gregoire, North Broward Hospital District Board
Commissioner Steven A. Wellins, North Broward Hospital District Board
Commissioner Christopher Ure, North Broward Hospital District Board
Lynn Barrett, General Counsel, North Broward Hospital District



EXHIBIT G

BAKER DONELSON

Global Controls for all Types of Payments

1. *All Focus Arrangements are administered consistent with the terms of the contract. No items, services, or payment will be provided except those set forth in the contract.*

Responsible Party-Responsible Person Identified on the CAT form/NPCAI sheet, as applicable: See number 2, below.

2. *All payments made to and from a Focus Arrangement party are consistent with the terms of the contract. No other items, services, or payment will be provided except as set forth in the contract.*

Responsible Party-Responsible Person Identified on the CAT form/NPCAI sheet, as applicable:

The Director of Medical Staff explained to the IRO her responsibilities with regard to the system-wide radiology contract. She said that the contract covers five medical directors. She receives the invoice. The time sheets for the medical directors are available to her on ServiceNow. She stated that she reviews to assure that Broward Health pays in accordance with the terms of the contract and the monthly rate stated in the contract.

The CFO for Imperial Point Hospital states that her main responsibility is to assure that payments to physicians are consistent with the terms of the contract.

The CFO at Coral Springs Hospital, when he receives a request to pay a physician for call coverage, for example, reviews the terms of the contract, the rate, term, and the annual hours cap, to assure the requested payment is consistent with the terms of the contract.

Before approving payment for a medical director, the CFO at the Medical Center looks at the physician's time entries in ServiceNow. He assures a contract is in place, looks at the effective dates of the contract and assures that the check request is consistent with the compensation provision of the contract.

3. *All Focus Arrangements (as well as all support documents such as time logs) are stored in contract database.*

Responsible Party-Contract Administration: The Director of Contract Administration expressed to the IRO her intention that her department perform periodic audit checks to assure data is input correctly into C360. Contract Administration's work in this regard on the "clean-up project" during the Third Reporting Period is described more fully in the Systems Review Report.

4. *All payments are made to the physician, group, or entity with whom Broward Health has the contract.*

Responsible Party-Director of Payroll: Payroll confirmed that it uses C360 to assure that a contract is in place with the payee.

Responsible Party-Manager of Accounts Payable: Accounts Payable assures that the payment being made corresponds to the party with whom Broward Health has a contract. Accounts Payable uses C360 to verify that a contract is in place. Other payments are tied to a PO25 which cannot be issued unless a contract is in place.

5. *Internal Control 5 has been deleted.*

6. *If there are multiple contracts, only one check is issued per contract per invoice. One check is not issued for services provided under multiple contracts.*

Responsible Party-Director of Payroll: This internal control is not followed. If an employed physician has a medical directorship, the medical director pay would be included on the bi-weekly regular paycheck.

Responsible Party-Manager of Accounts Payable: Accounts Payable does not regard this internal control as being authoritative since PO25 is in place.

7. *Upon entering any new or renewed Focus Arrangement in the contract database, Contract Administration informs TCA, AP, and WC, as applicable, of any new or renewed contracts, including amendments.*

Responsible Party-Contract Administration: Accounts Payable represented to the IRO that they assure a contract is in place before they make a payment. Accounts Payable has used C360 for this purpose. Accounts Payable receives notice from ServiceNow when a new physician contract is in place.

8. *If there are multiple contracts with an employed physician, see Internal Control 27 below.*

9. *Internal Control 9 has been deleted.*

Physician Employment

10. *Human Resources, Payroll, and AP are updated on a weekly basis of any new or renewed physician employment contracts, including amendments.*

Responsible Party-VP of Physician Services: According to the Vice President of Physician Services, this is not the responsibility of Physician Services. Physician Services states that, Contract Administration has responsibilities with regard to all new and renewed employment agreements. Concerning new physicians, according to Physician Services, Human Resources is responsible for inputting information so that the new physician may be added to payroll. With regard to existing physicians, if there is a change in hourly rate, BHPG submits a form to Human Resources to make any necessary hourly rate adjustments.

11. Physician coding is reviewed and corrected, as necessary, prior to wRVUs being calculated.

Responsible Party-VP of Physician Services: The Vice President of Physician Services represented to the IRO that quarterly audits are conducted by an outside auditing firm, Doctors Management. Errors identified in the reviews are corrected in NextGen, and the physician's wRVU's are adjusted. A corrected claim is submitted to the payer.

12. wRVUs are verified to ensure they are appropriately assigned based on the results of the physician coding review in Internal Control 11.

Responsible Party-VP of Physician Services: The Vice President of Physician Services referred the IRO to the responsibilities set out above in number 11.

13. wRVUs are reconciled on a monthly basis to ensure they are consistent with the terms of the employment contract.

Responsible Party-VP of Physician Services: The Associate Vice President of Business operations for Physician Services represented to the IRO that persons under her supervision perform these RVU reconciliations.

The Vice President of Physician Services stated that wRVUs personally performed by physicians and payroll data are entered monthly on compensation worksheets. She stated that formulas for individual physician contract terms are used within the worksheet to ensure all contract terms are captured. Compensation reconciliations take place on a quarterly basis. Quality Metrics and Coding Accuracy Rates are evaluated quarterly. Per contract terms, compensation is evaluated quarterly to determine if a payment is due to the physician or owed to Broward Health. All payments are included within the reconciliation.

14. 100% review of all quality measures contained in the employment contract is conducted and reported for the quarter within thirty days of the end of the quarter based on contract terms.

Responsible Party-System Chief Medical Officer: The Vice President of Physician Services informed the IRO that, the Quality Department, along with the CMO, is working on creating a method to electronically abstract quality data. She stated that the majority of the physicians on the new contract template are PCP's. Currently the PCP metrics have to be abstracted manually which can cause a delay in the contractually stated 30 day payment calculation. Currently, data is being abstracted manually for a portion of inpatient metrics and all Ambulatory metrics. She stated that Physician Services is actively recruiting an additional employee to assist in the timely completion of the abstraction.

15. *100% review of all compliance measures, including coding, contained in the employment contract is conducted and reported for the quarter within thirty days of the end of the quarter.*

Responsible Party-Chief Compliance Officer: The Vice President of Physician Services confirmed that this process is currently in place. She stated that Doctors Management is on site once a month. Quarterly audits are reviewed with the physicians on a rotating basis. Once the audit has been reviewed with the physician it is considered a final score.

16. *Physician schedules are created on a weekly basis and reconciled by the Practice Managers against the actual time worked by the physician in advance of being sent to the VP of Physician Services to calculate the hourly number.*

Responsible Party-BHPG Director of Operations: According to Physician Services, a schedule template is input in NextGen for each physician. The office staff fills the time slots accordingly. Any days that are blocked require pre-approval by the Operations Manager and a signed personal leave slip by the Director of Operations or the Senior Vice President of Physician Services. A schedule may be altered based on on-call schedules. Physician Services stated that management is aware of on-call days. There is a monthly reconciliation completed monthly for on-call services provided by BHPG physicians.

17. *Practice Managers ensure that rendering and billing providers are assigned appropriately.*

Responsible Party-BHPG Director of Operations: According to Physician Services, Practice Managers and/or Coordinators are responsible for the entry and accurate submission of charges. The rendering provider selection flows through automatically on the NextGen encounter for outpatient charges. It is manually selected on inpatient charges. Physician Services states that, the billing office will task back the site if an encounter was billed with the incorrect rendering physician/location combination based on a location mismatch report. Management is responsible for the oversight of the task report sent by the billing office to ensure corrections are completed within a week.

18. *CMEs are approved in advance by Physician Services.*

Responsible Party-VP Physician Services: BHPG Finance maintains a spreadsheet reconciling all CME days taken and associated reimbursements. CME requests are submitted to an analyst within Physician Services who then confirms the CME request is compliant with the contract terms and the remaining dollars available. If approved by BHPG Finance, the form will be given to the Director of Operations or Senior Vice President of Physician Services for final approval. All requests must be preapproved in order to be reimbursed.

19. *CME expenses are verified (with receipts) and approved, tracked, and recorded by Physician Services based on the contractual terms.*

Responsible Party-VP Physician Services: See Number 18.

Responsible Party-BHPG Director of Operations: The Associate Vice President of Business Operations for Physicians Services stated that Physician Services maintains a spreadsheet on CME.

20. *Practice Manager enters hours worked, PL time and CME time into Kronos daily.*

Responsible Party-BHPG Director of Operations: The Vice President of Physician Services explained that, since physicians are exempt employees, they have a preloaded schedule in Kronos. All time off is entered by the Operation Manager as submitted. All time off requires pre-approval (PL/CME/e.g.), documentation is kept at the Corporate Office. Time Cards are reviewed and approved the Monday after the close of the prior bi-weekly pay cycle.

21. *Hours entered into Kronos are reconciled with the schedule, adjusted as necessary, and approved by Physician Services by the Monday after the close of the prior biweekly pay cycle.*

Responsible Party-BHPG Director of Operations: See Number 20.

22. *Payroll confirms that hours approved in Kronos match hours being paid out through Lawson.*

Responsible Party-Director of Payroll: The Director of Payroll confirmed to the IRO that hours approved in Kronos match hours being paid out through Lawson.

23. *wRVU, quality measure, and compliance measure calculations are done on a monthly basis to determine any incentive or set-off payments as required by the contract.*

Responsible Party-VP of Physician Services: The Vice President for Physician Services referred the IRO to her department's response to number 13.

24. *CME expenses are verified and reconciled on a monthly basis, consistent with the physician's contract.*

Responsible Party-Manager of Accounts Payable: Check requests for CME come to Accounts Payable reconciled. Accounts Payable treats the reconciliation of the payments to the contract as a condition of payments. The log is attached to the payment request and it shows the contract amount and the amount left on the contract balance for CME.

25. *CME expenses are recorded as separate line items on each check.*

Responsible Party-Accounts Payable: The IRO did not ask Accounts Payable about this internal control.

26. *Hourly rates are reconciled with approved schedules for physicians who are paid on an hourly basis (rather than productivity basis).*

Responsible Party-Manager of Remuneration Tracking: The Manager of Remuneration Tracking is not performing any tasks relating to this responsibility.

27. *All payments to the physician (salary, incentives, directorships, etc.) are tracked to ensure that contractual limits are not exceeded prior to any payment. This is currently completed manually; Broward Health will set up contract database for this purpose.*

Responsible Party-VP Physician Services: The Vice President for Physician Services referred the IRO to her department's response to number 13.

Medical Directorships (Individual)

28. *Time logs are reviewed to ensure that they are completed in accordance with contract (e.g. duties contained in contract) and the amount to be paid is consistent with the contract terms.*

Responsible Party-Department Manager/Hospital CEO: The IRO interviewed three system CEO's who confirmed that they fulfill this internal control responsibility.

29. *New contracts require time logs within 10 days after the end of the month.*

Responsible Party-Department Manager/Hospital CEO: The IRO interviewed three system CEO's who confirmed that they fulfill this internal control responsibility.

30. *Time logs will specify the exact hours that the services were performed. This will be a manual process until an electronic process can be implemented.*

Responsible Party-Department Manager/Hospital CEO: The IRO interviewed three system CEO's who confirmed that they fulfill this internal control responsibility.

31. *Bi-weekly schedules for employed physicians and medical directorship time logs are reconciled to ensure no overlap in clinical and non-clinical duties.*

Responsible Party-VP of Physician Services: As of the date of this report, Corporate Compliance was in the process of reviewing this control with various departments in order to determine the correct responsible and oversight parties to be assigned to this control.

32. *Department Manager and the Hospital CEO verify that the physician provided the services as described in the time log and signs the time log to provide attestation. Electronic signed time log is sent to the Compliance Department for review and approval prior to payment.*

Responsible Party-Department Manager/Hospital CEO: The IRO interviewed two system CEO's who confirmed that they fulfill this internal control responsibility. One CEO stated that the hospital CFO performs this task.

Medical Directorships (Hospital-Based)

33. *Time logs are required if paying for medical directors and are reviewed to ensure completeness, accuracy, and consistent with contract.*

Responsible Party-Department Manager/Hospital CEO: The IRO interviewed three system CEO's who confirmed that they fulfill this internal control responsibility.

34. *New contracts require time logs within 10 days after the end of the month.*

Responsible Party-Department Manager/Hospital CEO: The IRO interviewed three system CEO's who confirmed that they fulfill this internal control responsibility.

35. *Time logs specify the exact hours that the services were performed. This will be a manual process until an electronic process can be implemented.*

Responsible Party-Department Manager/Hospital CEO: The IRO interviewed three system CEO's who confirmed that they fulfill this internal control responsibility.

36. *Department Manager and Hospital CEO verify that the physician provided the services as described in the schedule and signs the schedule to provide attestation. Electronic signed schedule is sent to the Compliance Department for review and approval prior to payment.*

Responsible Party-Department Manager/Hospital CEO: The IRO interviewed three system CEO's who confirmed that they fulfill this internal control responsibility.

Hospital-Based Agreements

37. *Reconciliations are conducted on a quarterly or annual basis to ensure they are consistent with the terms of the contract.*

Oversight Party-Manager of Remuneration Tracking: In conducting audits, the Manager of Remuneration Tracking stated that he reconciles payments to contracts. However, he is not performing a specific audit of these payments. He conducts random audits. This internal control is not mentioned in the draft protocol for the Manager of Remuneration Tracking.

38. *All salaries, as applicable, are reviewed and approved on an individual basis, including program directors.*

Responsible Party-Hospital CFOs: Two regional CFOs stated that their hospital makes no payments that would be covered by this internal control. Another regional CFO told the IRO that, her hospital on a quarterly basis, receives an invoice from hospitalists for their fee. The hospital receives supporting documentation for the invoices. The region assures that the work is consistent with the contract terms.

39. *Reconciliation calculations are conducted on a quarterly or annual basis to determine any set-off payments consistent with the terms of the contract.*

Responsible Party-System Director of Finance/System COO: This is not performed by the COO. According to the Director of Finance, this internal control is under review.

Call Coverage

40. *Physician on-call schedule is established, reviewed, and approved one month in advance.*

Responsible Party-Hospital CEOs: The IRO interviewed three system CEO's who confirmed that they fulfill this internal control responsibility. One of the CEO's stated that under a new protocol at the hospital, the call schedule must be approved three months in advance.

41. *Facilities that have the same doctors on their staff confirm that doctors are not on call on the same day at more than one facility, unless such an arrangement is consistent with current fair market value and commercial reasonableness appraisal.*

Responsible Party-Hospital CEOs: The IRO interviewed three system CEO's who confirmed that they fulfill this internal control responsibility.

42. *Doctors are not scheduled on-call for two different specialties at the same time, unless such an arrangement is consistent with a current fair market value and commercial reasonableness approval.*

Responsible Party-Hospital CEOs: The IRO interviewed two system CEO's who confirmed that they fulfill this internal control responsibility. A third CEO stated that because of the specialties at the hospital, a physician would not be scheduled for call for two different specialties at the same time.

Inpatient Hospital Services and Clinic Follow-up (PPUC)

43. *Individual physician names are on the on-call schedule (may not be the group name). The physician's cell phone is also to be included.*

Responsible Party-Medical Staff Office/Hospital CEO: The IRO interviewed three system CEO's who confirmed that they fulfill this internal control responsibility.

44. *Physician signs attestation setting forth number of call days provided per month. Department Manager and Hospital CEO verify that the physician provided the services as described in the attestation and signs the schedule to provide attestation. Signed schedule is sent to TCA prior to payment.*

Responsible Party-Department Manager/Hospital CEO/Admin Director of TCA: The IRO interviewed three system CEO's who confirmed that they fulfill this internal control responsibility.

Payments of PPUC call were transferred from TCA to Accounts Payable effective November 1, 2017. The Administrative Director of TCA confirms that, from September 1 through October 31, 2017, TCA required a signed attestation and schedule as a condition of payment.

45. *Verify that services can be coded for under Medicare or Medicaid and would be eligible for coverage under Medicare or Medicaid.*

Responsible Party-Admin Director of TCA: The Administrative Director of TCA affirmed that TCA pays claims based on CMS/AMA coding guidelines.

46. *Medical necessity review of PPUC services is conducted based on sampling and risk stratification.*

Responsible Party-Admin Director of TCA/System CMO: The Administrative Director of TCA stated that medical necessity criteria were applied to test claims on a sample basis.

47. *Verify recoupments are processed if patient ends up being eligible for Medicaid.*

Responsible Party-Admin Director of TCA: According to the Administrative Director of TCA, TCA recovers payments for services to PPUC patients who are determined to be eligible for Medicaid or other insurance.

48. *PPUC form is completed and signed by the physician attesting to the services performed prior to payment.*

Responsible Party-Admin Director of TCA: The Administrative Director of TCA confirmed that payment by TCA requires attestation by the physician, by a signed call schedule and/or a signed CMS1500/HCFA form.

Physician Recruitment

49. *Physician group provides all expenses and collection documentation to VP of Physician Services.*

Responsible Party-VP of Physician Services: As of the date of this report, Corporate Compliance was in the process of reviewing this control with various departments in

order to determine the correct responsible and oversight parties to be assigned to this control.

50. Hospital reviews and approves expenses subject to appropriate backup documentation prior to payment.

Responsible Party-VP of Physician Services: As of the date of this report, Corporate Compliance was in the process of reviewing this control with various departments in order to determine the correct responsible and oversight parties to be assigned to this control.

51. Monthly reconciliations are conducted with all collections and expenses prior to payment.

Responsible Party-VP of Physician Services: As of the date of this report, Corporate Compliance was in the process of reviewing this control with various departments in order to determine the correct responsible and oversight parties to be assigned to this control.

Asset and/or Equipment Leasing

52. Contract administration is consistent with the terms of the appraisal, contract and with the Physician Financial Arrangement Review, Approval, Tracking and Monitoring Policy and the Non-Physician Financial Arrangement, Review, Approval, Tracking and Monitoring Policy prior to payment.

Responsible Party-VP of Physician Services: As of the date of this report, Corporate Compliance was in the process of reviewing this control with various departments in order to determine the correct responsible and oversight parties to be assigned to this control.

53. Payment for assets/equipment is consistent with the terms of the appraisal, contract and with the Physician Financial Arrangement Review, Approval, Tracking and Monitoring Policy and the Non-Physician Financial Arrangement Review, Approval, Tracking and Monitoring Policy prior to payment.

Responsible Party-VP of Physician Services: As of the date of this report, Corporate Compliance was in the process of reviewing this control with various departments in order to determine the correct responsible and oversight parties to be assigned to this control.

54. The actual lease of the asset/equipment matches the terms of the contract (such as the specific asset/equipment leased and frequency of use).

Responsible Party-VP of Physician Services: As of the date of this report, Corporate Compliance was in the process of reviewing this control with various departments in order to determine the correct responsible and oversight parties to be assigned to this control.

55. *Payment for assets/equipment is consistent with the terms of the contract and with the Physician Financial Arrangement Review, Approval, Tracking and Monitoring Policy and the Non-Physician Financial Arrangement Review, Approval, Tracking and Monitoring Policy prior to payment.*

Responsible Party-VP of Physician Services: As of the date of this report, Corporate Compliance was in the process of reviewing this control with various departments in order to determine the correct responsible and oversight parties to be assigned to this control.

Office Space and/or Timeshare Leases

56. *Internal Control 56 has been deleted.*

57. *Space walk-throughs are conducted to ensure that spaces used by a Focus Arrangement party are consistent with the terms of the contract (including space used and frequency of use) and confirm that any additional space, support services, equipment, etc. is not being provided.*

Responsible Party-Real Estate Manager/Systems Manager: These walkthroughs are being conducted.

58. *Payments for space are consistent with the terms of the contract and with the Physician Financial Arrangement Review, Approval, Tracking and Monitoring Policy and the Non-Physician Financial Arrangement Review, Approval, Tracking and Monitoring Policy prior to payment.*

Responsible Party-Real Estate Manager/Systems Manager: The property manager performs reconciliations and the Real Estate Manager reviews these reconciliations.

Research

59. *New position of Director of Human Research Protection must be filled and trained. Role will include reviewing and approving all new studies based on specific parameters.*

Responsible Party-System CMO: The System CMO was not interviewed by the IRO regarding this internal control.

60. *Time logs are required for all PIs on standard form.*

Responsible Party-Manager of Research: The Director of Corporate Research confirmed that physicians record their time for research (PARs). Employee doctors are salaried but must document hours of work on clinical trials. Non-employee doctors have a different log. The office of Corporate Research checks the time logs.

61. *Direct and indirect costs are contained in the study budget.*

Responsible Party-Manager of Research: The Director of Corporate Research confirmed that this internal control is followed.

62. *Review and approve time logs for all PIs and reconcile with contract prior to payment.*

Responsible Party-Manager of Research: The Director of Corporate Research confirmed that the Research Manager performs this task.

63. *For employed physicians who are involved with research, reconcile time logs with approved weekly schedules to ensure that research and clinical time do not overlap.*

Responsible Party-VP of Physician Services: The Director of Corporate Research confirmed that the Research Manager performs this task. Employed doctors are RVU based. If in clinic, the physician may not overlap time with research. The Research Manager reconciles time and pay and works with Physician Services on this.

64. *Payments are made in accordance with the study budget.*

Responsible Party-Manager of Research: The Director of Corporate Research confirmed that the Research Manager performs this task. The study budget is based on completed tasks. The physician is not paid according to time. Every contract, according to the Director of Corporate Research, is consistent with an approved fair market valuation.

Non-Monetary Compensation

65. *The Compliance Department pre-approves all non-monetary compensation (e.g., no cash or cash equivalents). Pre-approval is required for non-monetary compensation to all physicians, including employed physicians, and their immediate family members.*

Responsible Party-VP of Physician Services (employed physicians)/Hospital CFO's (non-employed physicians): As of the date of this report, Corporate Compliance was in the process of reviewing this control with various departments in order to determine the correct responsible and oversight parties to be assigned to this control.

66. *Director of Physician Relations coordinates any non-monetary compensation with Hospital CFO.*

Responsible Party-Director of Physician Relations: The Director of Physician Relations was not interviewed by the IRO.

67. *All pre-approvals of non-monetary compensation are be logged in contract database. This includes non-monetary compensation to all physicians, including employed physicians.*

Responsible Party-VP of Physician Services (employed physicians)/Hospital CFOs (non-employed physicians): As of the date of this report, Corporate Compliance was in the process of reviewing this control with various departments in order to determine the correct responsible and oversight parties to be assigned to this control.

68. *Reconciliations are conducted monthly to match the approved amount with the actual amount spent. This includes verification that the amount does not exceed that approved by CMS.*

Responsible Party-VP of Physician Services (employed physicians)/Hospital CFOs (non-employed physicians): As of the date of this report, Corporate Compliance was in the process of reviewing this control with various departments in order to determine the correct responsible and oversight parties to be assigned to this control.

Professional Courtesies

69. *Professional courtesies for Focus Arrangements will not be provided.*

Responsible Party-Hospital CEO: The IRO interviewed three hospital CEO's who each stated that their hospital does not provide any professional courtesies.

70. *Confirm professional courtesies are not provided to parties to Focus Arrangements.*

Responsible Party-Hospital CEO: The IRO interviewed three hospital CEO's who each stated that their hospital does not provide any professional courtesies.

Internal Controls over Non-Physician Referral Source or Physician Involved with Supplies, Devices, Equipment, and Patient Care Items

71. *Three-way matching process is used (verifying processed order in the system, inspect delivery to verify match with processed order, and review invoice to match order/delivery).*

Responsible Party-Director of CRMM/Regional Manager of Materials: The Vice President for Supply Chain Services and the Regional Manager of Materials confirmed that this internal control is operative. When a product arrives at Broward Health with an invoice, the invoice is matched to the purchase order. The receiver goes line by line on amount and quantity. The receiving ticket is maintained in Lawson. The matching purchase order and receiving ticket are maintained in Lawson.

72. *Pricing is verified with the agreed-upon pricing in the Focus Arrangement contract on a bimonthly basis.*

Responsible Party-Director of CRMM/Regional Manager of Materials: The Vice President for Supply Chain Services stated that none of the supply contracts are Focus Arrangements at this time. Two supply contracts were Focus Arrangements, but they are now expired. However, he confirmed that pricing is verified with pricing in the contract. One Regional Manager of Materials confirmed that she has not yet been introduced to C360, although she has recently been provided access to C360. She does not, at this time, look at the contract to verify pricing. She does, however, match the purchase order pricing to that on the invoice.

73. *Three-way match process is used (which includes matching the invoice with the order and delivery prior to payment) for hospitals by centralizing procurement process within corporate procurement.*

Responsible Party-Director of CRMM/Regional Manager of Materials: The Vice President for Supply Chain Services told the IRO that the three way match is validated by Accounts Payable. The Regional Manager of Materials told the IRO that the purchase order is matched to invoice and that is matched to what is delivered. This is the three way match and if this is in place, Accounts Payable will pay. She stated that the match is done, line by line on the invoice.

74. *Amount to be paid matches the invoice amount and payments are consistent with the terms of the contract and the Physician Financial Arrangement Review, Approval, Tracking and Monitoring Policy and the Non-Physician Financial Arrangement Review, Approval, Tracking and Monitoring Policy prior to payment.*

Responsible Party-Director of CRMM/Regional Manager of Materials: The Vice President for Supply Chain Services told the IRO that Procurement is not involved at all in this and that this function is performed by Contract Administration and Accounts Payable. The Regional Manager of Materials stated that she does not look at the contract but that this is the goal going forward after she receives training on C360.

Additional Leased Space, Supplies, Devices, Equipment, or Patient Care Items

75. *Any additional leased space, medical supplies, medical devices, equipment, or other patient care items not otherwise covered under this tracking document are monitored to ensure such use is consistent with the terms of the applicable Focus Arrangement.*

Responsible Party-Hospital CFOs/Clinic Practice Managers: The IRO interviewed three regional CFOs who all said that this internal control does not reach any of their responsibilities. They could not think of any leased items that would fall under their supervision.

76. *Any additional leased space, medical supplies, medical devices, equipment, or other patient care items not otherwise covered under this tracking document is paid in accordance with the terms of the applicable Focus Arrangement.*

Responsible Party-Hospital CFOs/Clinic Practice Managers: The IRO interviewed three regional CFOs who all said that this internal control does not reach any of their responsibilities. They could not think of any leased items that would fall under their supervision.



EXHIBIT H

BAKER DONELSON

I. Purpose

To provide guidelines for Tracking Remuneration of all entities considered Focus Arrangements.

II. Definitions

Tableau: Interactive data visualization tool that creates visualizations in the form of dashboards and worksheets from a broad spectrum of information sources. Tableau is fed by Broward Health (hereafter "BH") four systems (1. Lawson AP, 2. Lawson Payroll, 3. Trizetto, and 4. HAS) used to issue payments to all entities; such entities should be only the ones considered "Focus Arrangements"

C-360: Comprehensive software solution that streamlines governance, risk and compliance management.

ServiceNow: A web-based software used for multiple purposes throughout the system. As it relates to focus arrangements, it is used for Medical Directors to log their timesheets to process payments and also used as a mechanism to create new vendors and obtain the focus arrangement determination.

III. Policy

The Manager of Tracking Remuneration shall be responsible of the following:

- 1) Tracking Remuneration to and from all parties to the Referral Source Contract;
- 2) Tracking service and activity logs to ensure that parties to the Referral Source Contract are performing the services required under the applicable Referral Source Contract (if applicable);
- 3) Monitoring the use of leased space, medical supplies, medical devices, equipment, and/or other patient care items to ensure that such use is consistent with the terms of applicable Referral Source Contract (if applicable); and
- 4) Review the contract database, internal review and approval process, and other Focus Arrangements procedures on at least an annual basis and providing a report on the results of such review to the Board and the Compliance and Ethics Committee.
- 5) Complete monthly reviews of contracts and payments to ensure that current processes are in compliance with BH and Federal Policies and Procedures.

IV. Procedure

- 1) Review, Monitor, and Audit on a monthly basis a sample of contracts/payments. The sample should be statistically valid and equally distributed between individual physician, physician groups, and non-physician referral source arrangements.
- 2) Using Tableau:
 - A sample of 25 entities will be taken at random from four sources of payments: 1. Lawson AP, 2. Lawson Payroll, 3. Trizzeto, and 4. HAS.
 - Contracts of the sample will be reviewed to verify if they are in Compliance with BH and Federal Policies and Procedures.
 - Payments showed in the Tableau sample will be compared against compensation established in the contract
- 3) If results are in compliance with BH and Federal Policies and Procedures, a new sample will

be taken the following month to ensure consistency.

- 4) If results are not in compliance with BH and/or Federal Policies and Procedures, a bigger sample will be reviewed to verify if “errors” or “inconsistencies” are consistently repeated across the institution.
- 5) If errors are not found in the second sample, a corrective action will be required of department(s) involved in such “errors” or “inconsistencies.”
- 6) If more errors are found in the second sample, indication of a trend of such “error” or “inconsistency,” will be reported to Compliance and Internal Audit. Compliance and Internal Audit, with the support of IT and Executive Management, will perform a follow-up to ensure appropriate corrective actions are implemented at all levels to ensure the reported “error” or “inconsistency” is not repeated again.
- 7) Compliance will perform “visits” to all departments involved in contract/payment process to ensure all personnel is appropriately educated and is following correct processes on a consistent basis.
- 8) PO25 monthly report will be reviewed to a) verify if contracts to be expired are under renewal and/or termination process, b) follow up with responsible departments where payments are close to get the cap salary as per contract.

V. Related Policies

- Training and Education Policy, Policy No. GA-004-245
- Physician and Non-Physician Financial Arrangement Review, Approval, Tracking and Monitoring, Policy No. GA-004-441
- Fair Market Valuation and Commercial Reasonableness Policy, Policy No. GA-004_410
- Enforcement of Disciplinary Standards Policy, Policy No. GA-004-238
- Monitoring and Auditing Policy, Policy No. GA-004-345

VI. References

- NBHD Corporate Integrity Arrangement II. C. 2

VII. Interpretation and Administration of Policy

This policy will be assessed and updated at least annually (and more frequently, if appropriate) and revised if necessary. Within 30 days of the effective date of any revisions or additions to this policy, a description of the revisions will be communicated to all affected responsible persons at Broward Health and a copy of the revised policy will be made available. The Chief Corporate Compliance Officer will monitor Broward Health’s Adherence to this policy and make routine, but not less than quarterly, reports to the Board.



EXHIBIT I

BAKER DONELSON

Flow Chart of Broward Health's Financial Arrangement Review and Approval Process
(as outlined in Broward Health Policy No. GA-004-441)

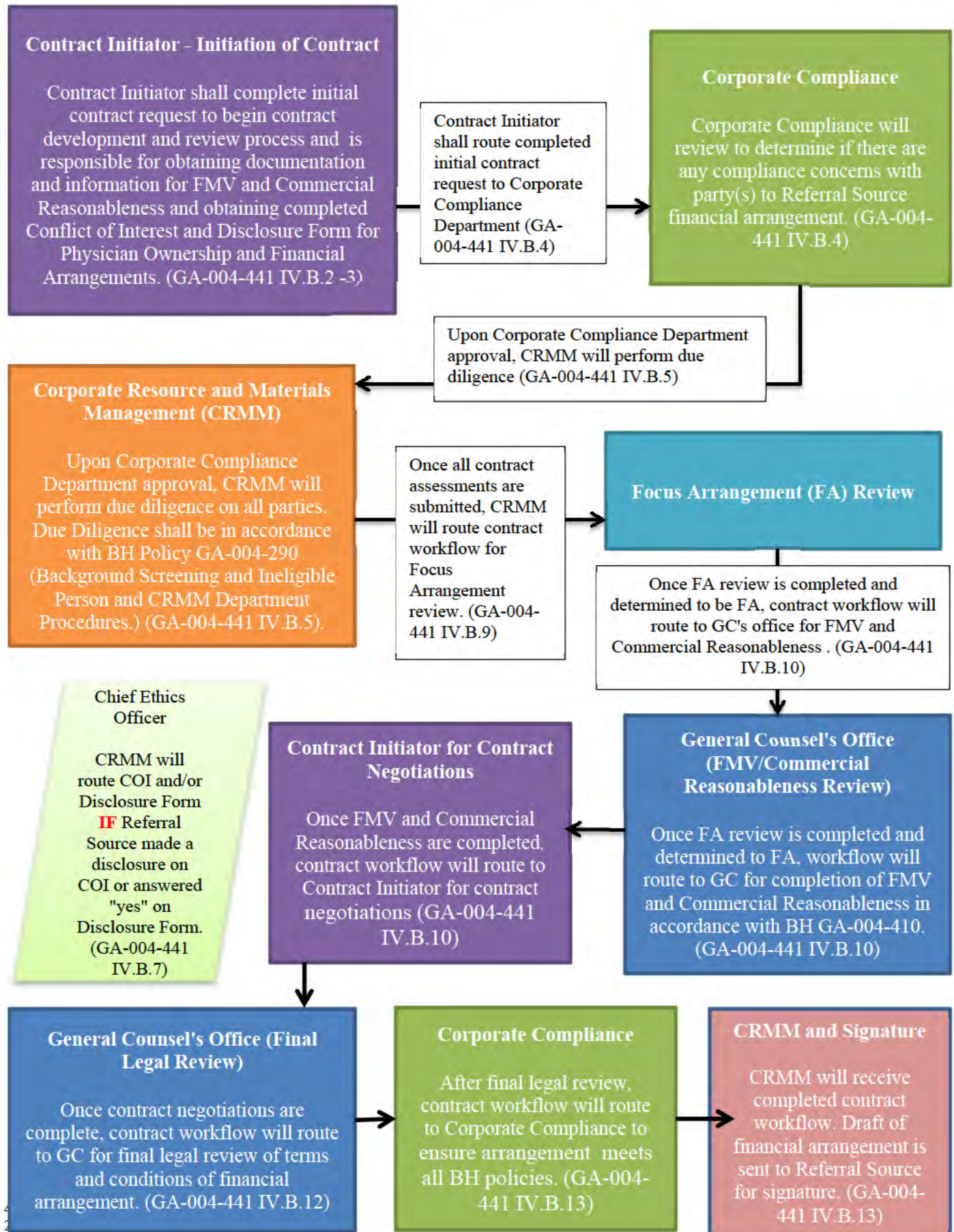




EXHIBIT J

BAKER DONELSON

Corporate Compliance Annual Review Report **Focus Arrangement Audit**

Focus Arrangement Audit**July 19, 2018**

Audit Topic:

Focus Arrangements

Purpose of Audit:

This is a retrospective audit performed to review the contract database ("C360"), internal review and approval process, and other Focus Arrangement procedures.

Background:

As required by Broward Health Policy GA-004-441 Physician and Non-Physician Financial Arrangement Review Approval Tracking and Monitoring ("GA-004-441"), Section V.B.2, the Corporate Compliance Department must complete a review of the contract database, internal review and approval process, and other Focus Arrangement procedures on at least an annual basis and provide a report on the results of such review to the Broward Health Board of Commissioners, Compliance and Ethics Committee.

Audit Timeframe:

The contracts reviewed were executed between August 31, 2017 to June 1, 2018.

Sampling Methodology:

A report was pulled from C360 of all new or renewed Focus Arrangement contracts that had an executed status. The RATSTATS software was used to randomly select 30 contracts, including 10 physician (individual), 10 physician (group) and 10 other agreement types (services, managed care, clinical trials, etc.).

Auditors:

Eloisa Gomez, Sr. Focus Arrangements Specialist, Corporate Compliance

The Audit Process Consisted of:

- Review of each contract and related documents to ensure internal review and approval process, and other Focus Arrangement procedures were followed and were properly documented as required in GA-004-441, Section IV.

Focus Arrangement Audit
July 19, 2018
Focus Arrangements Audit Results:

Categories	Old Workflow Total Contracts: 17				New Workflow Total Contracts: 13			
	Yes	No	N/A	Unable to Determine	Yes	No	N/A	Unable to Determine
Contract Initiator Review and Approval	8	9	0	0	13	0	0	0
Conflicts of Interest Form	12	4	1	0	9	1	3	0
Disclosure Form for Physician Ownership & Financial Arrangements	12	4	1	0	9	1	3	0
Focus Arrangements Review	15	2	0	0	13	0	0	0
Focus Arrangements/ Covered Person Language added to Agreement	14	2	1	0	10	0	2	1
Was all required Due Diligence Completed?	11	6	0	0	13	0	0	0
Assessments or Questioners	9	8	0	0	12	1	0	0
Ethics Review (if Disclosures Exist)	7	4	6	0	10	1	2	0
Focus Arrangements Requirements Met? (Certifications, Broward Health Code of Conduct and Stark Law and Anti-Kickback Statute Policies and Procedures)	12	5	0	0	13	0	0	0
Fair Market Value and Commercial Reasonableness Report	11	5	1	0	8	1	4	0
General Counsel's Office Review and Approval	11	6	0	0	13	0	0	0
Corporate Compliance Department Review and Approval	11	6	0	0	13	0	0	0
Board Review and Approval	0	0	17	0	1	0	12	0
Contracts Review	11	6	0	0	13	0	0	0
Executed	16	1	0	0	12	0	0	1

Old Workflow: Prior to 01/08/2018
New Workflow: After 01/08/2018

Focus Arrangement Audit**July 19, 2018**

Review of Findings:**Contract Initiator Review and Approval**

- No supporting documentation was found that indicated that initiator or CEO approval was provided for nine of the contracts reviewed: 1012655, 1019204, 1019144, 1019239, 1019157, 1012447, 2000479, 1019244 and 2000100.

Conflicts of Interest

- Conflict of Interest forms were not found in C360 and Ethics review was not completed for five of the contracts reviewed: 1012655, 1019144, 1019157, 1012447, and 2000405.

Disclosure Form for Physician Ownership & Financial Arrangements

- Disclosure Form for Physician Ownership & Financial Arrangements forms were not found in C360 and Ethics review was not completed for five of the contracts reviewed: 1012655, 1019144, 1019157, 1012447, and 2000405.

Focus Arrangements Review

- Focus Arrangements review was not conducted on two of the contracts reviewed. Both contracts have auto-renewal terms and failed to go through auto-renewal workflow process: 1012655 and 1012447.

Focus Arrangements/ Covered Person Language

- Focus Arrangements and Covered Person language was not included in two contracts of the contracts reviewed.
 - 1012655: This agreement was executed 01/30/2012 prior to CIA and it was not reviewed or amended to include language.
 - 1011605: This is a Medical Directorship Agreement with Bhagchandani, Lal MD and while it contains the Covered Person language, Focus Arrangements language was not included. The agreement had missing pages, which may have the Focus Arrangements language.
- Contract #: 2000315 was labeled “unable to determine” due to the fact that contract attached to workflow does not match all other information in workflow. It is a draft for a different agreement. Therefore, the Focus Arrangements/Covered Person Language question could not be answered.

Was All Required Due Diligence Completed?

- Due Diligence was not completed for six of the contracts reviewed:
 - Auto-renewal agreements that did not follow the process: 1012655 and 1012447.
 - Board certification was not attached for one or more of the business partners to four of the contracts reviewed: 1019144, 1019157, 1019048 and 1013213.

Focus Arrangement Audit**July 19, 2018**

Assessments or Questionnaires

- Assessments or Questionnaires were not found for eight of the contracts reviewed because they were initiated and/or executed prior to the full transition into C360, therefore assessments were not completed in C360. No other questionnaires or CAT forms were found for those workflows either: 1012655, 1019204, 1019144, 1019239, 1019157, 1019244, 1019285 and 1012447.
- One contract was labeled "Not Applicable" because the Focus Arrangement Assessment ("CT#3") but only a commercial reasonableness memo was required for this agreement and was included.

Ethics Review (if Disclosures Exist)

- Ethics Review was not completed for five of the contracts reviewed:
 - Two of the contracts have auto-renewal terms and did not follow the appropriate process, so COI and FOD forms were not obtained: 1012655 and 1012447.
 - Two of the contracts were initiated and/or executed prior to the full transition into C360 so there is no evidence of Ethics review: 1019144, and 1019157.
 - COI and FOD forms were not obtained and the COI/FOD Assessment ("BP# 2") was completed by Contracts exempting based on "Publicly Traded Company" for Contract #: 2000405.

Focus Arrangements Requirements Met? (Certifications, Broward Health Code of Conduct and Stark Law and Anti-Kickback Statute Policies and Procedures)

- Focus Arrangements requirements were not met by five of the contracts reviewed:
 - The certifications required by all Covered Persons was not attached to the following contracts for some of all of the business partners: 1019144 and 1019244.
 - Evidence of the BH Code of Conduct and policies related to Stark and Anti-Kickback Laws being provided to the entity was not included in the following contract files: 1019144, 2000317, 1019285 (need to determine if fully executed), and 2000100.

Fair Market Value and Commercial Reasonableness Report

- FMV/ CR Report was not attached to six of the contracts reviewed:
 - No documentation of FMV/CR reports found for: 1019144, 1019157, 1019285 (need to determine if fully executed), 1019244 (Early Steps FMV/CR Memo) and 1019239.
 - For Contract#: 2000860, the report is not attached to workflow, however CT# 3 reflects that it was obtained and there is an agreement justification e-mail from requesting CEO, Todd-Atkinson, Sandra J.

General Counsel's Office Review and Approval

- General Counsel's Office Review and Approval was not documented for six of the contracts reviewed: 1012655 (auto-renewal), 1019244, 1019144, 1019157, 1012447 (auto-renewal) and 1019285.

Focus Arrangement Audit**July 19, 2018**

- Although two of those contracts did have legal approval in the actual contract, Compliance was reviewing to ensure the appropriate steps were followed in the workflow.

Corporate Compliance Department Review and Approval

- Corporate Compliance Department Review and Approval was not documented for six of the contracts reviewed: 1012655 (auto-renewal), 1012447(auto-renewal), 1019204, 1019144, 1019157, and 1019244.
 - Compliance approval found only in cover memo for 1019144, 1019157 and 1019244.

Board Review and Approval

- Board review and approval was required and obtained for one of the contracts reviewed. The other 29 agreements reviewed did not required Board review or approval.

Contracts Review

- Contracts Review was not documented for six of the contracts reviewed: 1012655 (auto-renewal), 1012447(auto-renewal), 1019209, 1019204, 1019144, and 1019157.

Executed

- One of the agreements reviewed was not executed (1019285) and one of the agreements reviewed cannot be determined if agreement was executed due to the fact that the contract attached to workflow does not match all other information in workflow as it is a draft for a different agreement.

Focus Arrangement Audit**July 19, 2018****Conclusion:**

Prior to the change in C360 workflow that was implemented on January 8, 2018, there were multiple items missing. However, the new workflow does capture the required steps needed for Focus Arrangements effectively. Additionally, the new senior management requires and does multiple checks to ensure all required items are in the contract file prior to execution.

Follow-up Plan:

Finding	Recommendation	Responsible Party	Due Date
Multiple Items/Steps Not Completed in C360 Contract Files	Upload the missing information and document appropriately	Contracts Administration	30 days from receipt of report (emailed)

Corrective Actions:

Corrective Action Certification		
The signatures below indicate that the respective parties that oversee attest to having received and read the above report and will implement the corrective actions.		
Provider audited (printed)	Signature and title	Date
Provider audited (printed)	Signature and title	Date
Provider audited (printed)	Signature and title	Date
Provider audited (printed)	Signature and title	Date
Provider audited (printed)	Signature and title	Date



IRO FIRM AND TEAM MEMBER INFORMATION

BAKER DONELSON

FIRM PROFILE

For 130 years, Baker Donelson has built a reputation for achieving results for our clients, both nationally and internationally, on a wide range of legal matters. While providing legal services is our focus, it is how we deliver them that sets us apart. Our goal is to provide clients with more than what they have come to expect from a law firm.

Baker Donelson commits to a deep understanding of a client's business, to enable us to anticipate clients' needs and assist in their decision-making processes. Because we offer consistent, knowledgeable guidance based on their specific goals and objectives, clients view us as a valued business partner. This allows them to focus on the growth and success of their businesses, confident their legal issues will be handled by an attentive, responsive team.

Our unique approach to providing legal and policy services is enabled by our extensive support structure. As the 57th largest law firm in the U.S., Baker Donelson gives clients access to a team of more than 750 attorneys and public policy advisors representing more than 30 practice areas, all seamlessly connected across 22 offices to serve virtually any legal and policy need. We provide to our clients a global network of local counsel and other professionals, and have helped our clients take advantage of global opportunities in more than 90 countries spanning six continents. Clients receive informed guidance from experienced, multi-disciplined industry and client service teams. Our federal and state public policy groups provide sound policy advice and comprehensive tracking services, keeping clients up-to-date on critical legislative and regulatory developments. Our diversity and women's initiatives ensure a welcoming and inclusive environment for our people, perspectives and experiences. Technology helps us operate more effectively and efficiently by providing instant access to client-specific information and other key resources.

FIRM RECOGNITION

Firm and Culture

- Named as 57th largest law firm by *National Law Journal* in 2018 (based on number of attorneys).
- Ranked 91st largest law firm by *The American Lawyer* in 2018.
- Named as 49th largest law firm on *Law360* 400 (number of U.S. attorneys) in 2018.
- Ranked 96th on *FORTUNE* magazine's "100 Best Companies to Work For" list in 2018.
- Since 2006, listed as a "Go-To Law Firm" in the Directory of In-House Law Departments of the Top 500 Companies produced by Corporate Counsel and American Lawyer Media.
- Ranked 13th overall on Vault's "Best Law Firms to Work For" list in 2017 which includes a #1 ranking for Transparency, a #8 ranking for Formal Training, and a #10 ranking for Firm Culture and Informal Training.
- Ranked 10th overall on Vault's "Best Law Firms for Diversity" list in 2018 which includes a #3 ranking for Diversity for Women and a #10 ranking for Diversity for Individuals with Disabilities.
- Named to The BTI Client Service A-Team for 2018, recognizing client service excellence based on objective feedback from corporate counsel.

Attorneys

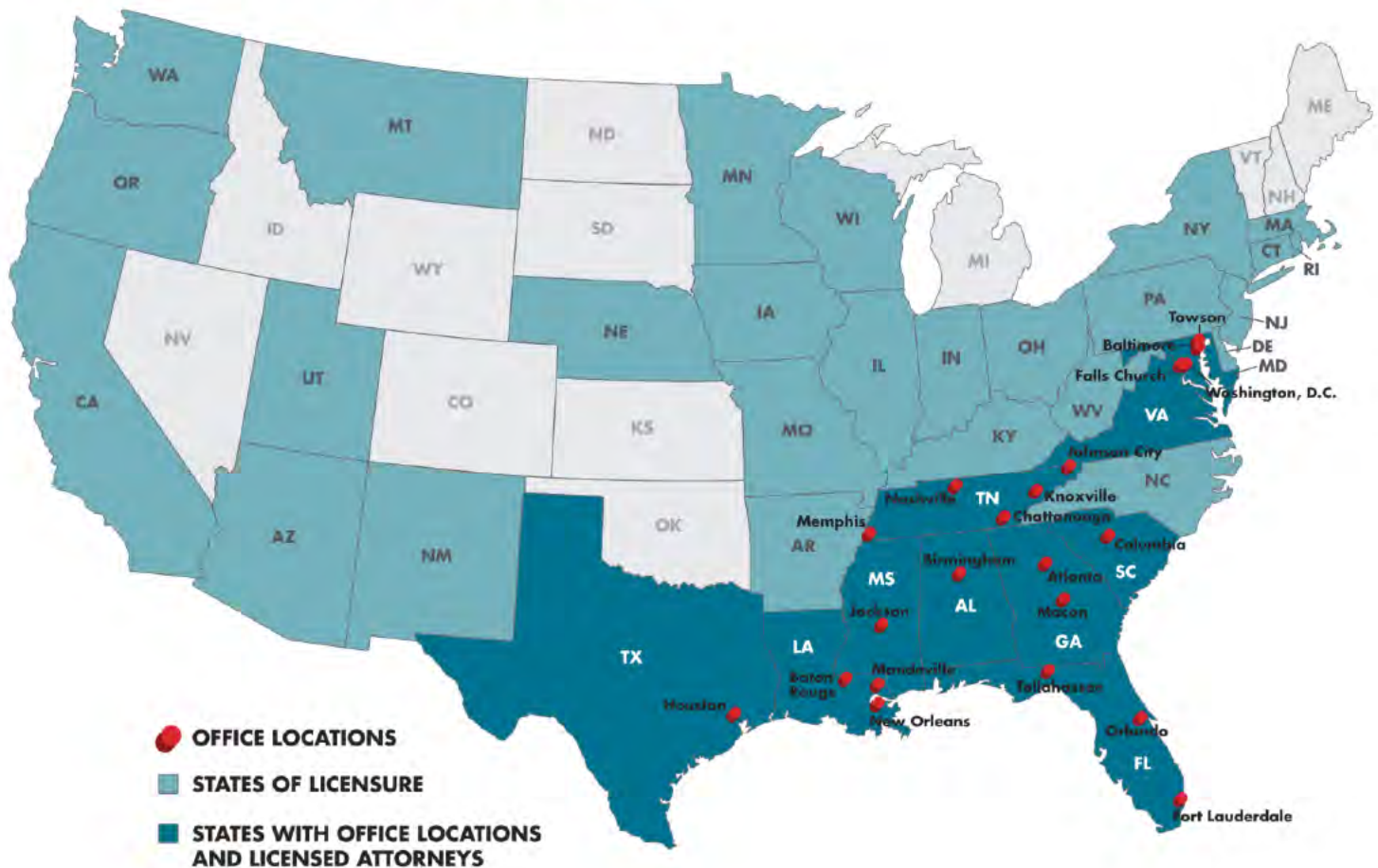
- 79 attorneys in *Chambers USA: America's Leading Business Lawyers* in 2018 across 25 practice areas.
- 5 attorneys in *Chambers High Net Worth Guide* in 2018.
- 277 attorneys in *The Best Lawyers In America*® 2019.
- 160 attorneys listed in *Super Lawyers* and 83 attorneys listed as *Super Lawyers* "Rising Stars".

Practices

- Ranked as a leading firm in Healthcare and Construction by *The Legal 500* in 2016; one attorney is also recognized as a "Leading Lawyer" in Healthcare.
- 197 Tier 1 metropolitan rankings in 2018 *U.S. News – Best Lawyers* "Best Law Firms".
- Earned Tier 1 national rankings in the 2018 *U.S. News – Best Lawyers* "Best Law Firms" list in Commercial Litigation; Construction Law; Employment Law – Management; Health Care Law; Litigation – Construction; Litigation – Labor and Employment; Mass Tort Litigation/Class Actions – Defendants; Railroad Law and Real Estate Law.
- Ranked third in the 2018 American Health Lawyers Association's "Top Honors" rankings and third in the 2018 *Modern Healthcare* "Largest Healthcare Law Firms" list.
- Selected by *Chambers USA: America's Leading Business Lawyers* as one of the nation's leading health law practices since 2010.
- Ranked in *Chambers High Net Worth Guide* in 2017 in the area of Private Wealth Law in Maryland, Mississippi and Tennessee.
- Named the 2016 *U.S. News - Best Lawyers* "Law Firm of the Year" in Railroad Law.

- Based upon total number of attorneys listed in *The Best Lawyers In America*® 2019, we are top-listed in the nation in seven practice areas: Business Organizations (including LLCs and Partnerships), Closely Held Companies and Family Businesses Law, Litigation - Construction, Non-Profit/Charities Law, Personal Injury Litigation - Defendants, Professional Malpractice Law - Defendants and Transportation Law.
- Named by *Benchmark: Litigation* (2017) as a "Highly Recommended" Firm in Louisiana, Mississippi and the Sixth Circuit; named as a "Recommended Firm" in Tennessee.

OUR OFFICE LOCATIONS



STATES OF LICENSURE

Alabama	Illinois	Mississippi	Ohio	Virginia
Arizona	Indiana	Missouri	Oregon	Washington
Arkansas	Iowa	Montana	Pennsylvania	Washington, D.C.
California	Kentucky	Nebraska	Rhode Island	West Virginia
Connecticut	Louisiana	New Jersey	South Carolina	Wisconsin
Delaware	Maryland	New Mexico	Tennessee	
Florida	Massachusetts	New York	Texas	
Georgia	Minnesota	North Carolina	Utah	

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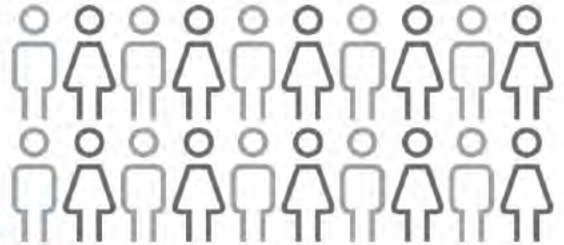
www.bakerdonelson.com

BAKER DONELSON

OUR FIRM

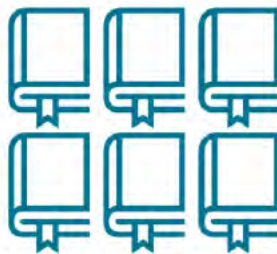
57th 
LARGEST LAW FIRM BY
NATIONAL LAW JOURNAL IN 2018

MORE THAN
750
ATTORNEYS AND
POLICY ADVISORS



22 
OFFICES ACROSS TEN STATES
AND WASHINGTON, D.C.

MORE THAN
30
PRACTICE
AREAS



FORTUNE MAGAZINE'S
100 BEST COMPANIES
TO WORK FOR
NINE 
YEARS IN A ROW

RECOGNIZED AS ONE OF THE
TOP THREE 
HEALTH CARE
PRACTICES IN THE NATION

COUNSELED CLIENTS WITH
OPPORTUNITIES IN MORE THAN
90  **6**
COUNTRIES ON CONTINENTS

REPRESENT
EMERGING COMPANIES
IN EVERY
STATE IN THE
SOUTHEAST



 REPRESENT
MORE THAN
OF THE TOP
40
100
FINANCIAL SERVICES
COMPANIES IN THE COUNTRY

1/2 REPRESENT MORE THAN
FORTUNE 100
&
1/4 MORE THAN
FORTUNE 1000

ACHIEVED A
SCORE OF
100 
IN THE HUMAN RIGHTS
CAMPAIGN'S
CORPORATE
EQUALITY INDEX

 **277**
ATTORNEYS
SELECTED TO
BEST LAWYERS[®]

 **79**
ATTORNEYS
RECOGNIZED BY
CHAMBERS USA

25 
PRACTICE AREAS
RECOGNIZED BY
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NATIONALLY
BY U.S. NEWS WITH
197 TIER 1 RANKINGS





J. Scott Newton

Shareholder

Jackson | T: 601.351.8914 | E: snewton@bakerdonelson.com

J. Scott Newton, a shareholder in the Firm's Jackson and Washington, D.C. offices, has more than 25 years of experience investigating, prosecuting or defending federal criminal and civil allegations and violations as a Special Agent with the Federal Bureau of Investigation, an Assistant United States Attorney and private practice attorney.



Overview

Mr. Newton concentrates his practice on government investigations and litigation, primarily focusing on health care fraud, white collar crime, internal corporate investigations, and working as an Independent Review Organization. He has extensive jury and bench trial experience in cases including the prosecution of white collar crime, murder/manslaughter and other criminal and civil matters.

Government and Internal Investigations

Publically-traded companies, those with global operations, and companies ranked in the Fortune 1000 rely on Mr. Newton's wealth of experience navigating complex defense proceedings involving white collar crime, internal corporate investigations, and parallel criminal/civil health care fraud cases. Mr. Newton defended or is defending the world's leading financial services company, the oldest and largest health care company in the country, the largest American managed care company, the world's leading health care IT company, the largest military shipbuilding company in the country, a 1,300 physician-owned Medicare Advantage HMO, and a publicly-traded pharmacy chain among others.

Mr. Newton currently serves as the Independent Review Organization (similar to a monitor) for the ninth largest public health system in the country. He regularly conducts complex internal corporate investigations, sometimes making referrals of employee misconduct for federal prosecution. Mr. Newton has represented clients across the spectrum of health care providers against False Claims Act (FCA) and its *qui tam* provisions, Anti-Kickback Statute (AKS), Stark and other allegations, including hospital systems, health maintenance organizations, pharmaceutical manufacturers and distributors, physician practices, nursing homes, and pharmacies.

Mr. Newton has two decades of experience handling what is considered to be the most complex of litigation matters, parallel criminal-civil FCA prosecutions. He regularly responds to grand jury investigations, including leading responsive internal investigations, addressing search warrants, subpoenas, seizure of assets, preparing witness testimony, the production of records, leading litigation, trying cases, negotiating settlements and/or pleas. He also prepares and negotiates compliance programs, addresses other remedial administrative measures and has experience assisting with transactional due diligence.

Mr. Newton serves as an Adjunct Professor of Law, teaching White Collar Crime and Health Care Fraud classes. He has spoken across the country about conducting, prosecuting, responding to and/or defending government investigations and has served as an expert witness in health care fraud litigation.

Disaster Recovery and Government Services

Mr. Newton was appointed by Mississippi Governor Haley Barbour as Special Counsel to the Governor's Commission for Recovery, Rebuilding and Renewal after Hurricane Katrina. With a commitment to continue serving the impacted communities, he was integrally involved in the development and implementation of Baker Donelson's disaster recovery offerings and served as the chair of the Disaster Recovery and Government Services Group. Through strategic partnerships, the Firm gained a national reputation as one of the only law firms in the country with the capability to serve public clients in substantive project management and provide disaster recovery legal guidance. Baker Donelson provided financial management oversight, grant administration and compliance, legal guidance, fraud prevention, regulatory and policy advice, appeals and arbitrations of grant determinations to state agencies involving more than \$5.5 billion in program funding from FEMA and HUD for more than 800 represented entities involving more than 11,000 Hurricane Katrina projects closeouts, and under FEMA's \$3.2 billion Public Assistance Program (recognized as a leading practice by the United States Government Accountability Office), \$425 million Hazard Mitigation Grant Program, and \$200 million Emergency Management Assistance Compact as well as HUD's \$2 billion Project Management Office and \$250 million Small Rental Program.

The Firm's HUD program funding work has expanded to Louisiana, New Jersey, New York, Tennessee and Texas.

Department of Justice (DOJ) Experience

Prior to joining Baker Donelson, Mr. Newton served as an Assistant United States Attorney (AUSA) for Health Care Fraud Enforcement in Louisiana and Mississippi, where he prosecuted more than 200 complex health care fraud cases, resulting in the recovery of more than \$25 million for the Medicare Trust Fund. He also prosecuted one of the largest narcotics traffickers in the country, obtaining the first life sentence in a drug case in the Southern District of Mississippi. He has experience in prosecuting public corruption cases and has tried white collar and narcotics cases. Mr. Newton is a two-time recipient of the prestigious "Integrity Award," the highest honor bestowed by the United States Department of Health and Human Services Inspector General on individuals outside HHS-OIG.

Mr. Newton also served as a Special Agent with the Federal Bureau of Investigation (FBI) where he led one of the first high-profile corporate scandal investigations, which involved a \$520 million international tax evasion, securities and bank fraud case with a public company and its nationally known accounting, investment banking and law firms. Mr. Newton's work helped secure convictions of the company's Chairman of the Board, Chief Executive Officer, General Counsel, and three managing directors, for inflating stock prices and diverting millions of dollars offshore. The case was featured in the *Wall Street Journal*, *Barrons* and numerous other publications. He initiated and directed "Stamp Out," the first FBI effort aimed at electronic benefit card and food stamp fraud, worked on the FBI's largest national undercover telemarketing case, the "Montana Freeman" Standoff, and the "Unabomber" case.



Representative Matters

- Currently serves as the Independent Review Organization for one of the ten largest health systems in the country, following its entering into the largest non-litigated Stark Law settlement in history and the undertaking Corporate Integrity Agreement (CIA) mandated compliance measures. The hospital system includes four hospitals with more than 1,500 beds, more than 9,000 employees and nearly 1,900 credentialed physicians, dozens of ancillary and community health service lines. The work has included an Arrangements Systems and Transactions Reviews, reviewing the work of the Governor-appointed Board of Commissioners, every member of the corporate office and hospital-based senior management, and every department involved in the contracts process. Mr. Newton conducted compliance testing, remuneration tracking and other work to ensure compliance with federal laws, regulations and the CIA, presenting public reports since early 2016.
- Defended a 1,300 physician-owned Medicare Advantage HMO in parallel criminal and civil investigations in which the United States alleged a significant failure to provide care to Medicare members. After a several year investigation, the criminal and civil matters against the client were closed without action.
- Defended a health care provider, as a member of the trial team, where it was found that the federal government failed to carry its burden of proof in a \$895 million suit. The government alleged that one of the country's largest skilled nursing facilities and an affiliate entered into a kickback arrangement with a pharmaceutical company resulting in a violation of the FCA and AKS. The case is significant because of the amount of the allegation and as one of the rare defense trial verdicts in a federal FCA action.
- Conducted complex internal investigations for one of the largest defense contractors in the world under \$19 billion and \$2.2 billion contracts.
- Conducted an estimated \$260 million internal investigation regarding mortgage fraud for a global publicly-held financial services company and its subsidiaries, resulting in the filing of a Suspicious Activity Report and employee terminations.
- Conducted a complex internal investigation of and defended a large defense contractor's parts delivery, storage and repair processes under a \$50 million government contract.
- Defended the largest distributor of pharmaceuticals and oldest and largest health care company in the country in litigation brought by the Mississippi Attorney General and its associated plaintiff's counsel alleging a complex fraudulent Medicaid pricing scheme.
- Defended a hospital in parallel criminal and civil FCA and AKS investigations in which the federal government alleged payments were made to a physician for nearly \$45 million in referrals (not including FCA or AKS penalties, which would have resulted in several hundred million being alleged). After the criminal case against the hospital was closed without action, a \$1.75 million civil settlement was eventually reached. The non-client physician was convicted at trial and received a 7 1/2 year sentence.
- Successfully defended a publicly-held company accused of making illegal PAC contributions to United States Congressman and Speaker of the House Tom DeLay.

- Defended publicly-traded pharmacy chains against civil allegations of overbilling Medicaid for prescriptions.
- Represented two Mississippi Governors in their personal capacities in three actions before the Mississippi Supreme Court and/or the United States Court of Appeals for the Fifth Circuit threatening the constitutionality of Mississippi's tort damage caps.
- Special Prosecutor Pro Tempore, Hinds County District Attorney's (DA) Office (Court-appointed, 2008 – present) pro bono prosecutor of violent crime cases when the DA has a conflict. Tried murder/manslaughter case five years after the event upon learning the DA had a conflict, after meeting the victim's family, and addressing serious factual problems. Cases resulted in two convictions.
- Successful pro bono litigation and counsel to a former Presbyterian church, which left their national denomination over conservative doctrinal, theological and property ownership issues.



Professional Honors & Activities

- AV[®] Preeminent[™] Peer Review Rated by Martindale-Hubbell
- Listed in *The Best Lawyers in America*[®] in Government Relations Law (2011 – 2019); Health Care Law (2013 – 2019); Antitrust Litigation (2015 – 2019); Qui Tam Law (2018 – 2019)
- Named *The Best Lawyers in America*[®] 2016 and 2018 Jackson-MS Antitrust Litigation "Lawyer of the Year"
- Listed in *Mid-South Super Lawyers* in Government/Cities/Municipalities and Civil Litigation Defense (2006, 2013 – 2018)
- Adjunct Professor of Health Care Fraud – Mississippi College School of Law (2012 – present)
- Adjunct Professor of White Collar Crime – Mississippi College School of Law (2009 – present)
- 2003 Republican nominee for Mississippi Attorney General
- Special Prosecutor Pro Tempore – Hinds County District Attorney's Office (2008 – present)
- Association of Certified Fraud Examiners – Regent Emeritus, Vice Chairman of the Board of Regents (2003 – 2004), Member since 1994
- Judicial Advisory Study Committee (appointed and reappointed by Mississippi Supreme Court Chief Justice William L. Waller, Jr.) (2009 – 2018)
- Special Counsel to the Governor's Commission for Recovery, Rebuilding, and Renewal Following Hurricane Katrina (appointed by Mississippi Governor Haley Barbour) (2005)
- U.S. Department of Health and Human Services Inspector General's "Integrity Awards" (2000, 2002)
- Special Agent – Federal Bureau of Investigation, Salt Lake City Division (March 1991 – May 1997)
 - Received Commendations, Cash Incentive and Time Off Awards from FBI Director Louis J. Freeh (1995, 1996)
- FBI Representative – United States Securities and Commodities Fraud Task Force
- Assistant Commissioners Award for Distinguished Support of IRS-CID (1995)

- Appointed to U.S. Department of Justice Health Care Fraud Working Group
- Member – American Health Lawyers Association
- Recipient – Baker Donelson Jackson Pro Bono Attorney of the Year for Hurricane Katrina work (2007)



Publications

- "Costs Increase for Health Care Fraud and Abuse Violations," *Health Law Alert* (March 2018)
- Featured – "Internal Investigations Can Be Best Fraud Defense," *Healthcare Risk Management* (October 2013)
- "A New Prosecutorial Model for Health Care Fraud," *Law360* (July 2012)
- "Conditions of Participation and Payment as Qui Tam Defense," *Law360* (December 2011)
- "Health Care Industry Feels The Heat," *Law360* (May 2011)



Speaking Engagements

- "What To Do When The Fraud Investigator Shows Up At The Door: From Start to Finish," Health Care Law Update, University of Mississippi CLE, Ridgeland, Mississippi (May 2015)
- "Internal Investigations: Fraud Prevention, Detection, and Compliance," Mississippi State University, Starkville, Mississippi (March 2014)
- "The Increasing Importance of Corporate Internal Investigations," Mississippi Corporate Counsel Association (September 2013)
- "Legal Careers in Health Care," Health Law Society, Mississippi College School of Law (April 2012)
- "Bringing the DME Heat: The Investigation, Prosecution and Effective Compliance," U.S. Attorney's Office for the Western District of Tennessee Health Care Fraud Task Force, Memphis, Tennessee (July 2011)



Education

- University of Mississippi School of Law, J.D., 1990
- University of Mississippi, B.A., 1987



Admissions

- Mississippi, 1991
- Texas, 2011
- Utah, 2013



Jonell B. Beeler

Shareholder

Jackson | T: 601.351.2427 | E: jbeeler@bakerdonelson.com

Jonell Beeler, shareholder in the Jackson office, concentrates her practice in health care.



Overview

Ms. Beeler serves as the co-chair of the Health Care Regulatory Group. She also leads the Health Care Fraud and Abuse focus area within the Government Enforcement Investigations Group. Her experience includes health care compliance; Medicare and Medicaid reimbursement, provider enrollment, conditions of participation and regulatory matters; federal and state fraud and abuse laws, anti-referral laws and corporate practice of medicine laws; managed care; health care acquisitions and joint venture arrangements and public hospital and tax exempt hospital issues.

She regularly advises clients on the Medicare Anti-Kickback Statute, the Stark Law, the Civil Monetary Penalties Statute, the False Claims Act and other federal and state legal, regulatory and business issues related to the health care industry. She has defended clients in civil, criminal and administrative investigations, advised on self disclosure and repayments and negotiated Settlement Agreements and Corporate Integrity Agreements. She is a member of the Baker Donelson team currently serving as the Independent Review Organization of a large hospital system under the terms of its Corporate Integrity Agreement.

Her clients include hospitals and hospital systems, medical practices and physician organizations, practice management companies, ambulatory surgery centers, cardiac catheterization laboratories, pathology laboratories, imaging and other independent diagnostic treatment centers, radiation oncology centers and other specialty providers.



Professional Honors & Activities

- Listed in *Mid-South Super Lawyers* 2009
- Listed in *The Best Lawyers in America*® since 2005; Health Care Law
- Named as a Leading Health Care Attorney by *Legal Media Group* in 2006
- Member – American Bar Association: Vice Chair, Payment & Reimbursement Interest Group of Health Law Section, 2009 – 2013; Member, Business Law Section
- Member – Mississippi Bar Association: Health Law Section Executive Committee, 2014 – 2019, Immediate Past President, Health Law Section; Study Committee on the Model Act for Uniform Health Care Decision; Former Director, Young Lawyers Section
- Member – Capital Area Bar Association
- Member – American Health Lawyers Association

- Named a "Top 10 Leader in Law" by the *Mississippi Business Journal*, 2016
- Named as one of Mississippi's 50 Leading Business Women by the *Mississippi Business Journal*, 1999
- Past member – Managed Care Task Force of the Jackson Chamber of Commerce
- Served on the State and Local Government Committee of the Mississippi Economic Council
- Member – Phi Delta Phi
- Member – Phi Kappa Phi



Publications

- Co-author – "Health Care Fraud and Abuse CY 2017 Section of Health Law Handbook" (2018 Edition)
- "Costs Increase for Health Care Fraud and Abuse Violations," *Health Law Alert* (March 2018)
- "HHS OIG Expands Safe Harbors, but Doubles Down with Enhanced Civil Monetary Penalties" (December 2016)
- "Agencies and the Department of Justice Raise Level of Civil Penalties for Violations" (July 2016)
- "OIG Hospital Compliance Audits: Is Your Number Up? Are You Ready?" (October 2015)
- Co-author – "Yates Memo Puts Health Care Employees, Execs On Notice," *Firm360* (October 2015)
- Co-author – "OIG Hospital Compliance Audits: Is Your Number Up? Are You Ready?," Bloomberg BNA (September 2015)
- "Department of Justice Mandate: Prosecute Individuals for Corporate Wrongdoing" (September 2015)
- ""The Stark Law has become a booby trap..." Says the Federal Appeals Court. Why Health Care Providers Should Heed the Warning" (July 2015)
- Co-author – "FCA Cases May Be Lurking Within CMS Refund Obligation," *Law360* (May 2012)



Speaking Engagements

- "Legal Ethics When Conducting Investigations and Defending Government Cases for Health Care Clients," presented at Health Care Law Update sponsored by The University of Mississippi School of Law, Center for Continuing Legal Education (June 2018)
- "Health Care Fraud and Abuse Compliance," presented to the Florida Society for Healthcare Risk Management and Patient Safety (February 2017)
- "Legal Ethics In Healthcare Representations," presented to The Mississippi Bar, Health Law Section (February 2016)
- "The Consolidation Continuum: Alternative Provider Alignment Structures, Part I: Everything Old is New Again - Hospital/Physician Affiliations in an Accountable Care World," American Health Lawyers Association webinar (January 2016)

Jonell B. Beeler

Jackson | T: 601.351.2427 | E: jbeeler@bakerdonelson.com

- "Legal Ethics In Conducting Internal Investigations And Defending Clients In Government Actions And Fraud Cases," presented at Health Care Law Update, sponsored by The University of Mississippi School of Law, Center for Continuing Legal Education (May 2015)
- "Get Paid for the Long Term Care You Provide: How to Fight a Medicare Audit and Win," webinar presented by Jonell Beeler and Christy T. Crider (June 2012)



Webinars

- Fraud & Abuse Webinar Compliance Program 101 (December 2015)



Education

- University of Mississippi School of Law, J.D., 1982, cum laude
- University of Mississippi, M.A., 1975
- University of Mississippi, B.A., 1973



Admissions

- Mississippi, 1982



Michael T. Dawkins

Shareholder

Jackson | T: 601.351.2428 | E: mdawkins@bakerdonelson.com

Michael T. Dawkins, shareholder in the Jackson office, concentrates his practice in the areas of white collar criminal defense, environmental law, conducting internal investigations and defending investigations of all types conducted by state and federal government departments and agencies.



Overview

Mr. Dawkins' white collar practice involves his defense of individuals and companies investigated or charged with various white collar crimes, including financial and tax fraud, economic espionage, theft of trade secrets, crimes against the environment and charges of mail fraud and wire fraud. With regard to investigations and lawsuits under the civil Federal False Claims Act he has decades of experience defending individuals and companies, including government contractors.

Mr. Dawkins' environmental practice includes conducting confidential compliance reviews and audits, encompassing all areas of state and federal environmental law and regulation. He advises clients in situations where environmental violations have been self-detected in these reviews and audits and advises clients on questions of self-reporting and the employment of best practices to reduce the future risk of noncompliance. He advises with regard to Phase I and Phase II Environmental Site Assessments and other aspects of due diligence in the sale and acquisition of property and the development of contaminated property, including Brownfields.

He has nearly 30 years of experience in the defense of clients in administrative, civil and criminal investigations and enforcement matters involving environmental permitting, regulatory and statutory noncompliance. He frequently works with consulting engineers, toxicologists and other experts, including experts in the fields of the fate and transport of hazardous and toxic substances into the environment.

In the area of internal investigations, most recently, he has conducted internal investigations of allegations of financial statement misstatements and insurance fraud. He often works on investigations with forensic accountants and financial statement auditors in the testing and investigation of fraud. He has several years of experience defending criminal federal income tax and state sales tax investigations and prosecutions.

Due in large part to his experience in accounting, auditing and the performance of internal investigations, Mr. Dawkins conducts systems reviews for the purpose of monitoring compliance with requirements of federal and state statutes and regulations, as well as compliance with best practices procedures implemented for the purpose of systematizing and maintaining that compliance. He advises clients on changes to practices, policies and procedures in order to improve compliance and avoid violations of statute and regulation.

Mr. Dawkins worked in public accounting for four years, principally in the areas of auditing and tax, and he has maintained his license as a certified public accountant since 1984. He has represented CPAs in professional liability cases, disciplinary proceedings and in civil and criminal matters involving allegations of violations tax law.



Representative Matters

- Obtained a Brownfield designation from the Mississippi Commission on Environmental Quality on behalf of a regional biofuel company.
- Defended an engineer in an environmental crimes investigation involving wastewater violations of the Clean Water Act, resulting in no indictment.
- Defended a CPA sued for marketing of tax shelters.
- Represented a recycler in an environmental crimes investigation, resulting in no indictment.
- Defended a NASA contractor accused of submitting false claims for reimbursement of labor charges incurred under cost reimbursement contract, three-month trial in federal district court, resulting in a verdict for less than three percent of amount sought by the government.
- Represented a hospital management company in a lawsuit filed by the hospital, establishing the negligence of the independent CPA's performance of annual audits and failure to comply with generally accepted auditing standards.
- Obtained summary judgment in favor of a government contractor, who was engaged to expand a commuter railway servicing a major New England municipality, accused of making false claims in an environmental impact statement.
- Represented the defendant in a federal perjury investigation, resulting in no indictment.
- Defended taxpayers and CPAs investigated or prosecuted for tax evasion.
- Conducted a timecard internal investigation for an Eastern seaboard civil engineering company/government contractor.
- Obtained summary judgment dismissing the action against a property manager in False Claims Act litigation regarding HUD rental assistance payments.
- Represented CPAs facing licensure inquiries by state boards of accountancy.



Professional Honors & Activities

- AV[®] Preeminent[™] Peer Review Rated by Martindale-Hubbell
- Listed in *Best Lawyers in America*[®] in the area of Environmental Law since 2008; White-Collar Criminal Defense since 2015
- Named the *Best Lawyers'* 2019 Jackson-MS Environmental Litigation "Lawyer of the Year"
- Listed in *Chambers USA: America's Leading Business Lawyers* since 2010
- Listed in *Mid-South Super Lawyers* (2007 – 2008, 2010 – 2018)
- Selected by *American Lawyer Media* as a "2013 Top Rated Lawyer in White Collar – Criminal Defense"
- Member – ABA Section of Litigation, Criminal Litigation Committee; Chair, Ethics Subcommittee (2012 – 2013)

Michael T. Dawkins

Jackson | T: 601.351.2428 | E: mdawkins@bakerdonelson.com

- Mississippi Bar Association (Member – Task Force on the Attorney-Client Privilege, 2006 – 2007; Chair – Environmental Seminar Committee of Section on Natural Resources, Energy & Environmental Law (SONREEL), 1997 – 1998; Chair – SONREEL Environmental Crimes Subcommittee, 1996 – 1997)
- Fellow – American Bar Foundation
- Named the 2013 Volunteer of the Year by Mission First Legal Aid Office
- Certified Public Accountant since 1984*
- North Jackson Rotary Club – Secretary (2011 – 2012); Treasurer (2010 – 2011); Director of Club Administration (2007 – 2008); Programs Committee (2006 – 2007); Sergeant at Arms (2005 – 2006)
- Jackson Public Schools – Partners in Education (Adopt-a-School program; mentoring, Book Buddy program); Advisory Board Member (2000 – 2008); President of Advisory Board (2006 – 2007)
- Mentor – Baker Elementary School (1990 – 2000)



Publications

- "DOJ's Offshore Compliance Initiative Will Reach Outside Switzerland," *American Bar Association Section of Litigation Criminal Litigation News* (June 2015)
- "Conviction Stands Despite Defendant Not Having Sent Fraudulent Emails," *American Bar Association Section of Litigation Criminal Litigation News* (June 2015)
- "Pro Bono Lawyers Obtain Reversal of Sabotage Act Conviction of Catholic Nun," *American Bar Association Section of Litigation Criminal Litigation News* (June 2015)
- "Former Hughes, Hubbard & Reed Partner Enters Plea of Guilty to Tax Fraud," *American Bar Association Section of Litigation Criminal Litigation News* (June 2015)
- "Ethical Issues for Corporate Counsel in an Internal Investigation," *American Bar Association Section of Litigation Criminal Litigation News* (December 2014)
- "'Privacy Comes at a Cost': Cellphones and the Fourth Amendment," *American Bar Association Section of Litigation Criminal Litigation News* (June 2014)
- "Federal Grand Jury in SDNY Investigates GM Ignition-Switch Defect," *American Bar Association Section of Litigation Criminal Litigation News* (June 2014)
- "Attorney Sentenced to 15 Years for Marketing of Abusive Tax Shelters," *American Bar Association Section of Litigation Criminal Litigation News* (June 2014)
- "Supreme Court Denies Cert Supported by the NACDL," *American Bar Association Section of Litigation Criminal Litigation News* (May 2012)
- "South Carolina Businessman Charged With Illegally Exporting to Iran," *American Bar Association Section of Litigation Criminal Litigation News* (May 2012)
- Co-author – "When Criminal Defense Fees Come From Insurers ...," *Law360* (September 2011)
- Co-author – "The Pitfalls of Multiple Representations," *Law360* (August 2011)
- "The Necessity for Environmental Auditing of Hospitals," *Bloomberg Law Reports* (February 2010)

Michael T. Dawkins

Jackson | T: 601.351.2428 | E: mdawkins@bakerdonelson.com



Education

- University of Alabama, J.D., 1988
- University of Mississippi, Bachelor of Accountancy, 1981
- Meridian Junior College, A.A., 1979



Admissions

- Mississippi, 1988
- Alabama, 1990
- Tennessee, 2008



Found by clients to be '*competent and responsive*,' Michael Dawkins is well known for his work in the environmental field.

FROM CHAMBERS USA 2018





Sean Finan

Shareholder

Baton Rouge | T: 225.381.7003 | E: sfinan@bakerdonelson.com

Sean Finan, shareholder in the Firm's Baton Rouge office, is a member of the Health Law/Public Policy Group.

Overview

Mr. Finan concentrates his practice in the areas of regulatory compliance, licensing, fraud and abuse, Stark law, clinical research, health care transactions and government investigations.

Representative Matters

- Represented a nationally recognized academic medical center in a range of regulatory compliance issues.
- Represented a national concierge medicine company in maneuvering through state and federal regulatory compliance issues.
- Conducted a compliance audit of physician relationships on behalf of a nationally recognized health system.
- Assisted in negotiating a Corporate Integrity Agreement with the OIG on behalf of a hospital client.
- Advised a hospital client in structuring a hospital physician joint venture for the purchase and operation of a robotic surgical system.
- Advised various health care clients in reimbursement appeals issues.
- Advised on various hospital transactions, including conducting regulatory due diligence, drafting documents, facilitating licensure and certification transfers and addressing compliance issues.
- Advised an orthopedic specialty hospital in ownership restructuring as well as regulatory compliance issues.
- Assisted a major health system in shifting to an affiliation model.
- Drafted, reviewed and negotiated clinical trial agreements between clinical research organizations and sponsors.
- Represented a health care facility during a multi-year investigation by the United States Department of Justice.
- Assisted in developing proposals for alternative health care delivery systems in Louisiana post Hurricane Katrina.



Professional Honors & Activities

- Listed in *Best Lawyers in America*® in Health Care Law (2018, 2019)
- Named the 2019 *Best Lawyers'* Baton Rouge Health Law "Lawyer of the Year"
- Listed as a Louisiana Rising Star by *Louisiana Super Lawyers* (2013 – 2015)
- Member – Louisiana State Bar Association
- Member – American Bar Association, Health Law Section
- Member – American Health Lawyers Association
- Member – Louisiana Hospital Association
- Member – Louisiana Health Care Quality Forum, Medical Home Committee (2010 – 2011)



Community Involvement & Activities

- Mary Bird Perkins, Steering Committee
- United Way, Visiting Allocation Team
- Colon Cancer Coalition
- Habitat for Humanity
- Susan G. Komen Race for the Cure



Education

- Samford University, Cumberland School of Law, J.D. 2005, cum laude
- Miami University, Oxford, Ohio, Bachelor of Zoology, 1997



Admissions

- Louisiana, 2005
- Alabama, 2006



Margaret M. Silverstein

Of Counsel

New Orleans | T: 504.566.5226 | E: msilverstein@bakerdonelson.com

Margaret M. Silverstein, of counsel in the New Orleans office, concentrates her practice in the area of health care law.



Overview

Ms. Silverstein has substantial experience in negotiating and drafting physician and provider contracts; drafting hospital by-laws; analyzing Anti-kickback Law, Stark Law and Medicare reimbursement issues and advising clients regarding the formation of health care business ventures and the acquisition and/or sale of health care entities. She regularly assists in due diligence for health care transactions, including review of contracts for Stark Law and Anti-kickback Law compliance.

Her experience also extends to Medicare and Medicaid enrollment and the various state and federal licensing issues that arise in a health care transaction.



Representative Matters

- Drafted and made numerous enrollment and change of ownership filings for health care entities, including, Medicare, Medicaid, pharmacy, DEA and state license.
- Advised on pharmacy change of ownership requirements for several multi-state pharmacy transactions.
- Compliance review of numerous state and federal license, certification and enrollment filings.
- Performed scope of practice research projects for health care entities seeking to expand their use of mid-level practitioners.
- Advised on medical staff matters, including, analyzing and proposing revisions to medical staff bylaws, counseling on peer review matters, and counseling and advising on the National Practitioner Data Bank and the Health care Integrity and Protection Data Bank and state reporting requirements.
- Drafted, reviewed, and approved hundreds of physician contracts for compliance with federal and state regulatory requirements.

Margaret M. Silverstein

New Orleans | T: 504.566.5226 | E: msilverstein@bakerdonelson.com



Professional Honors & Activities

- Listed in *The Best Lawyers in America*® since 2006; Health Care Law
- Member – Louisiana State Bar Association
- Member – New Orleans Bar Association
- Member – State Bar of Texas
- Member – American Health Lawyers Association
- Member – Louisiana Society of Hospital Attorneys



Publications

- "Louisiana Rolls Out Regulatory Scheme for Medical Marijuana," *Health Law Alert* (August 2018)



Education

- Tulane School of Law, J.D., 1986, cum laude
- University of Virginia, B.A., 1981, with distinction



Admissions

- Louisiana, 1988
- Texas, 1986