

# *SWMBH Compliance Training*

# Overview of Medicaid Program Administration for Behavioral Health Services

The Medicaid Program is funded by both the federal and state governments and is directly administered by the States with approval and oversight by CMS.

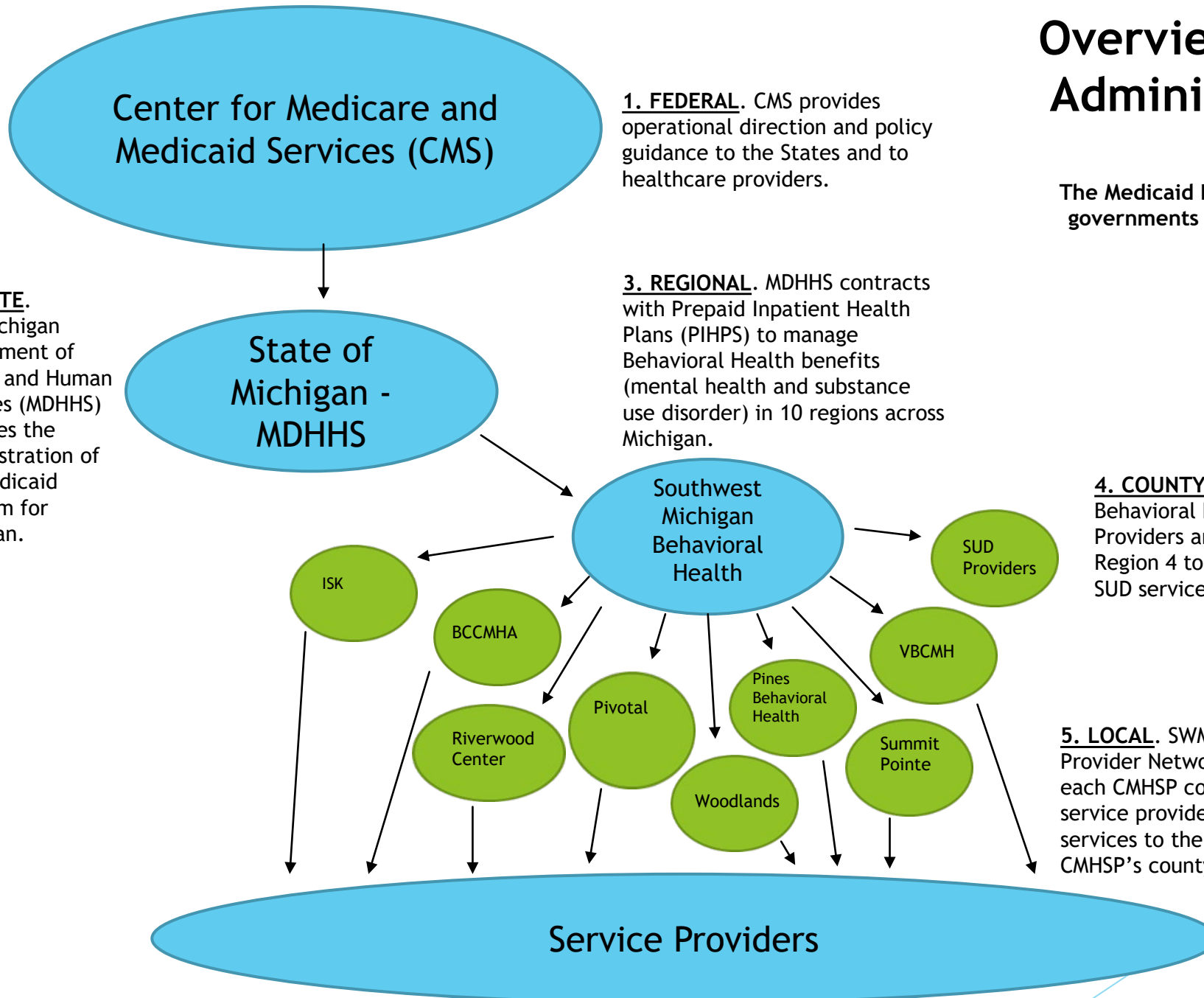
**1. FEDERAL.** CMS provides operational direction and policy guidance to the States and to healthcare providers.

**3. REGIONAL.** MDHHS contracts with Prepaid Inpatient Health Plans (PIHPS) to manage Behavioral Health benefits (mental health and substance use disorder) in 10 regions across Michigan.

**4. COUNTY.** Southwest Michigan Behavioral Health contracts with SUD Providers and with each of the CMHSPs in Region 4 to provide Mental Health and SUD services to Region 4 customers.

**5. LOCAL.** SWMBH delegates non-SUD Provider Network Management, therefore, each CMHSP contracts directly with various service providers to provide mental health services to the customers located in that CMHSP's county.

**2. STATE.** The Michigan Department of Health and Human Services (MDHHS) oversees the administration of the Medicaid Program for Michigan.



Service Providers



# What is Compliance?

- Healthcare compliance is the process of following rules, regulations, and laws aimed at *proactively preventing* fraud, waste, and abuse and ensuring member privacy, putting systems in place to *detect* inappropriate conduct, and working with affected stakeholders on appropriate *remediation*.

Accurate and complete financial reporting.

Encounter reporting

Supplemental employment

Authorizing medical

**Everyone is involved in Compliance,  
and  
Compliance is everyone's responsibility!**

Provider  
credentialing  
and provider  
qualifications

Claims

tickets,  
gift  
cards)  
from  
vendors

Employee  
expense  
reports

Information

# The Seven Elements of an Effective Compliance Program

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1. Implementing written policies, procedures, and standards of conduct

Code of Conduct; Corporate Compliance Plan; Policies & Procedures

2. Designating a compliance officer and compliance committee

Compliance Officer- Mila Todd; Compliance Oversight Committee

3. Conducting effective training and education

Compliance Training done at hire and annually thereafter.

4. Developing effective lines of communication

Open-door policy to Compliance Officer; Anonymous reporting; Whistleblower protections

5. Conducting internal monitoring and auditing

Annual FY Compliance Review and Monitoring; Provider Network Reviews

6. Enforcing standards through well-publicized disciplinary guidelines

Contained in Employee Handbook, Code of Conduct, Corporate Compliance Plan, and Policies & Procedures

7. Responding promptly to detected offenses and undertaking corrective action

All reports of wrongdoing will be promptly and confidentially investigated, and appropriate remedial action taken (can include Corrective Action Plans, repayments, notification to outside government agencies, training, etc.).

# What we will be discussing in this training:

Compliance Laws

Fraud, Waste and Abuse

Privacy

Reporting Requirements



# Compliance Related Laws

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## False Claims Act

- ▶ Holds individuals and companies liable for defrauding government programs by imposing penalties for knowingly submitting false claims for payment. It is the government's primary tool for combating fraud in programs like Medicare and Medicaid.

## Anti-kickback Statute

- ▶ Health care providers and suppliers MAY NOT give or receive "remuneration" in exchange for the referral of patients or services covered by Medicaid or Medicare.

## Exclusion Authorities

- ▶ Providers must ensure that no Federal Funds are used to pay for any items or services furnished by an individual who is debarred, suspended or otherwise excluded from participation in any federal health care program. This includes salary, benefits, and services furnished, prescribed, or ordered.

## Civil Monetary Penalties Law

- ▶ Allows the Office of the Inspector General (OIG) to impose civil penalties (MONEY) for violations of the Anti-Kickback Statute and other violations including submitting false claims and making false statements on applications or contracts to participate in a Federal health care program

## Criminal Health Care Fraud Statute

- ▶ Makes it a criminal offense to knowingly and willfully execute a scheme to defraud a health care benefit program. Health care fraud is punishable by imprisonment of up to 10 years, and fines of up to \$250,000. Specific intent is not required for conviction.

## Stark Law

- ▶ U.S. federal laws that prohibit physician "self-referral", specifically, a physician may not refer a Medicare or Medicaid patient to an entity providing designated health services ("DHS") if the physician or an immediate family member of the physician has a financial relationship with that entity.

# Exclusions

- ▶ The compliance team monitors all SWMBH staff, contractors and sub-contracted providers on a monthly basis.
- ▶ From the Employee Handbook
  - ▶ Employees are required to report any criminal convictions, including those described under sections 1128(a) and 1128(b)(1), (2), or (3) of the Social Security Act (SSA), and if they have had civil money penalties (CMP) or assessments imposed under section 1128A of the SSA, within five (5) calendar days of the conviction or CMP imposition to Human Resources. This is not intended to imply that a conviction would necessarily bar employment. Employment decisions must be consistent with state and federal rules and regulations regarding individuals with a criminal history



# PROTECTION, DETECTION PREVENTION AND ENFORCEMENT OF THE LAW: FRAUD, WASTE AND ABUSE

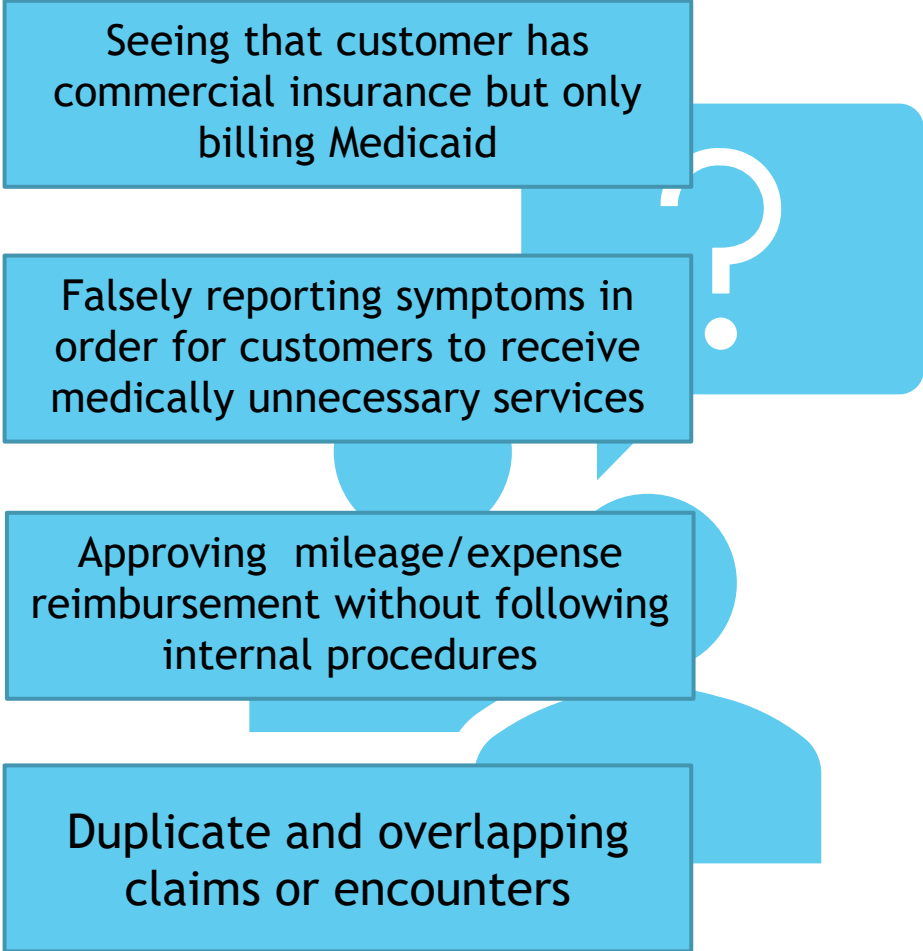


# FRAUD, WASTE, & ABUSE (FWA) defined

**Fraud:** is knowingly and willfully executing, or attempting to execute, a scheme or to defraud any health care benefit program or to obtain (by means of false or fraudulent pretenses representations or promises) any of the money or property owned by, or under the custody or control of, any health care benefit program. (18 U.S.C. § 1347)

**Waste:** is overutilization of services or other practices that, directly or indirectly, result in unnecessary costs to the health care system, including the Medicare and Medicaid programs. It is not generally considered to be caused by criminally negligent actions, but by the misuse of resources.

**Abuse:** Payment for items or services when there is no legal entitlement to that payment and the individual or entity has not knowingly and/or intentionally misrepresented facts to obtain payment.



Seeing that customer has  
commercial insurance but only  
billing Medicaid

Falsely reporting symptoms in  
order for customers to receive  
medically unnecessary services

Approving mileage/expense  
reimbursement without following  
internal procedures

Duplicate and overlapping  
claims or encounters

# How might you encounter Fraud Waste and Abuse at SWMBH?

- ▶ Audits and monitoring

Data mining

- ▶ Prior auth procedure checking for medical necessity

Communication between departments

- ▶ Mileage - printed google maps and senior leader sign off

**Whistleblower Protections**  
Federal and state law, and SWMBH  
Policy prohibit retaliation against  
an employee who makes a good  
faith report of actual/suspected  
misconduct.



# PRIVACY & CONFIDENTIALITY

## Behavioral Health Records

### Major Governing Rules

Health Insurance  
Portability and  
Accountability Act  
(HIPAA)

Health Information  
Technology for  
Economic and Clinical  
Health Act (HITECH)

42 CFR Part 2

Michigan Mental  
Health Code

# PRIVACY & CONFIDENTIALITY

## Behavioral Health Records

# Substance Use Disorder (SUD) Records

### 42 CFR Part 2 - Confidentiality of Alcohol and Drug Abuse Patient Records

- ▶ “Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any drug abuse prevention function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided in subsection (e) of this section, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized...”
- ▶ Prohibits even acknowledging an individual as a recipient of services
- ▶ Requires a very specific, detailed Release of Information (ROI)
- ▶ Requires information that is disclosed include a Prohibition on Redisclosure
- ▶ No information regarding a client should be released without a valid, 42 CFR Part 2-compliant ROI



# PRIVACY & CONFIDENTIALITY

## Behavioral Health Records

### **Mental Health Records - HIPAA**

- ▶ HIPAA is a federal law that provides data privacy and security provisions for safeguarding Protected Health Information. It has two main parts, the Security Rule and the Privacy Rule.

HIPAA Security Rule - “Covered entities must ensure the confidentiality, integrity, and availability of all electronic protected health information the covered entity creates, receives, maintains, or transmits.”

- ▶ The Security Rule applies to safeguarding electronic PHI (PHI stored on computers, sent via email, access permissions to PHI)
- ▶ Requires covered entities to protect against any reasonably anticipated threats or hazards, and reasonably anticipated unpermitted uses or disclosures, to the security or integrity of ePHI
- ▶ Entities must have Administrative, Physical, and Technical safeguards.
  - ▶ Administrative: Policies and procedures regarding how staff use electronic media that stores ePHI, policies regarding changing of Passwords
  - ▶ Physical: Limited access to locked server room, sign in/out logs
  - ▶ Technical: Use of encrypted devices, automatic logouts after inactivity

HITECH Act - Extended these requirements to covered entities' Business Associates.



# PRIVACY & CONFIDENTIALITY

## Behavioral Health Records

# Mental Health Records - HIPAA

HIPAA Privacy Rule - “A covered entity may not use or disclose protected health information, except as permitted or required...”

- ▶ “**Use**” means internal review or use of PHI (training, customer service, quality improvement)
- ▶ “**Disclose**” means release of PHI externally (faxing records to a provider)
- ▶ The “**Minimum Necessary**” information should be disclosed when use or disclosure is permitted or required. This means only the least amount of information that is necessary to accomplish the intended purpose of the use or disclosure should be requested. Exceptions include:
  - Disclosures to or requests by a health care provider for **treatment purposes**.
  - Disclosures to the **individual who is the subject** of the information.
  - Uses or disclosures made pursuant to an **individual’s authorization**.
- ▶ “**Need to know**”
- ▶ The most common use or disclosure of PHI is for “**TPO**”, or **Treatment, Payment, or Operations**
  - ▶ HIPAA allows for the use or disclosure of PHI for the purpose of TPO without consumer consent
  - ▶ HOWEVER, the Michigan Mental Health Code is **MORE RESTRICTIVE** and allows disclosure of PHI for Treatment, Payment, and Coordination of Care without consumer consent. Coordination of Care is a more limited disclosure purpose than HIPAA’s “Operations”.

PRIVACY & CONFIDENTIALITY  
Behavioral Health Records

# **Mental Health Records – MI Mental Health Code**

## Michigan Mental Health Code - Confidentiality (MCL 330.1748)

- ▶ “Information in the record of a recipient, and other information acquired in the course of providing mental health services to a recipient, shall be kept confidential and shall not be open to public inspection. The information may be disclosed outside the department, community mental health services program, licensed facility, or contract provider, whichever is the holder of the record, only in the circumstances and under the conditions set forth in this section or section 748a.”
- ▶ Amended effective April 10, 2017 to allow for disclosure of PHI for Treatment, Payment, and Coordination of Care in accordance with HIPAA.
- ▶ Best Practice: Always obtain a valid Release of Information to ensure compliance with the MI Mental Health Code. If you have questions regarding exceptions to this rule, contact the SWMBH Compliance Specialists.

PRIVACY & CONFIDENTIALITY  
Behavioral Health Records

# Mental Health Records – MI Mental Health Code

- ▶ **TREATMENT:** The provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation between health care providers relating to a patient; or referral of a patient for health care from one health care provider to another.
- ▶ **PAYMENT:** Activities undertaken by (1) A health plan to obtain premiums or to determine or fulfill its responsibility for coverage and provision of benefits under the health plan; or (2) A health care provider or health plan to provide reimbursement for the provision of health care.
  - ▶ **Includes:** eligibility/coverage determinations; COB; adjudication of claims; billing; medical necessity review; utilization review activities including preauthorization, and concurrent and retrospective review.
- ▶ **Coordination of Care:** Not specifically defined by HIPAA or the MI Mental Health Code.
  - ▶ If PHI is being shared between health care providers, it may fall under the purpose of “Treatment”.
  - ▶ If PHI is being shared between entities that are not health care providers (ex. PIHP and MHP), then disclosure of PHI is limited to entities that have a current or past relationship with the consumer who is the subject of the PHI, and the PHI must pertain to such relationship (45 CFR 164.506(c)(4)).

## Safeguarding PHI:

- ▶ Use unique Passwords on devices.
- ▶ Lock computers (Ctrl Alt Delete or Windows key & L), laptops and phone screens when they are not in use.
- ▶ Ensure proper disposal of PHI both in the office as well as in your home office.
- ▶ Discussions about customers are had in private.
- ▶ Attend ongoing training.
- ▶ Be aware of non SWMBH staff - remember to have guests check in at the front desk.
- ▶ Never send unencrypted email containing PHI.
- ▶ Never leave device unattended in public or leave paper records unattended.
- ▶ Never share your password with anyone

# PRIVACY & CONFIDENTIALITY

## Behavioral Health Records

### **Breach Reporting**

- ▶ A breach occurs when there is an unauthorized acquisition, access, use, or disclosure of PHI that compromises the security or privacy of that information.
- ▶ If you suspect or know of any situation involving a potential breach, it is your responsibility to report it to the Compliance Department for investigation.
- ▶ The Compliance team gathers facts about all reported unauthorized uses and disclosures and provides those facts to the SWMBH Breach Team.
- ▶ The Breach Team meets monthly to determine if reported incidents are considered a “breach” and require reporting to the member, the Office for Civil Rights, and potentially the media.

# PRIVACY & CONFIDENTIALITY

## Behavioral Health Records

### Breach Reporting - Examples

Sending an email containing PHI unencrypted (use [encrypt] to encrypt emails!)

A lost or stolen laptop (report to IT & Compliance immediately).

Sending an encrypted email that contains PHI in the subject line (remember, the subject line is NOT encrypted)

Sending PHI to the incorrect person (always confirm recipient information)

Putting clinical documents into the incorrect member or incorrect provider's record in Smartcare.

Others??

# Enforcement Bodies

## Center for Medicare and Medicaid Services (CMS)

- ▶ Federal Agency with the US Department of Health and Human Services (HHS) that administers the Medicare program and work in partnership with state governments to administer Medicaid programs.

## Office of the Inspector General (OIG)

- ▶ Enforcement division of the Federal Health and Human Services (HHS) agency, and of the Michigan Department of Health and Human Services.
- ▶ In charge of investigating Fraud, Waste, and Abuse in the Medicaid/Medicare Programs, and pursuing civil judgments under the Civil Monetary Penalties Law.

## Office for Civil Rights (OCR)

- ▶ In charge of enforcing HIPAA Privacy and Security Rules. Levy huge civil penalties against entities that violate HIPAA.
- ▶ Implement and monitor Corporate Integrity Agreements.

## Department of Justice (DOJ)

- ▶ Federal enforcement agency in charge of criminally prosecuting individuals/entities under applicable Federal laws.
- ▶ Works collaboratively with the OIG.

## Michigan Attorney General

- ▶ Health Care Fraud Division in charge of investigating Fraud, Waste, and Abuse in the Michigan Medicaid/Medicare Programs.
- ▶ Can prosecute individuals/entities criminally under applicable State laws.

# REPORTING RESPONSIBILITIES

It is your right, and your responsibility to report actual and suspected Compliance violations to Southwest Michigan Behavioral Health's Compliance Officer.

You may not be intimidated, threatened, coerced, discriminated against, or subjected to other retaliatory action for making a good faith report of an actual or suspected violation.

Duty to report

Whistleblower  
protections

## *Southwest Michigan Behavioral Health* **Compliance Reporting**

**Compliance Hotline:** 1-800-783-0914



**In-person, MS Teams, by telephone, or via email to:**  
*Alison Strasser, Interim Compliance and Privacy Officer*  
5250 Lover's Lane, Ste. 200  
Portage, MI 49002  
(800) 676-0423  
[swmbhcompliance@swmbh.org](mailto:swmbhcompliance@swmbh.org)