

Maricopa Integrated Health System: Administrative Policy & Procedure

Effective Date: 10/06

Reviewed Dates:

Revision Dates: 02/08

Policy #: 01111 S

Policy Title: Compliance: False Claims Act

Scope: **District Governance(G)**

System-Wide(S)

Multi-divisions(MD) _____

Division(D) _____

Multi-departments(MT) _____

Department(T) _____

Signature: (Original copy signed and held in MIHS Administrative Policy and Procedure Current Publications)

[John Middleton – Chief Compliance Officer, MIHS]

Purpose:

To educate all MIHS personnel, including employees, Medical Staff, contractors, and agents (“Personnel”), on the Federal and Arizona False Claims Acts, the Administrative Remedies under those Acts, and the legal protection under Federal and Arizona law given to personnel who report incidents of false claims to regulatory agencies (“whistleblower protection”), as required by the Deficit Reduction Act of 2005,

Definitions:

Knowing and Knowingly: means “for the purposes of this policy and with respect to information, MIHS:

- has actual knowledge of the information; or
- acts in deliberate ignorance of the truth or falsity of the information; or
- acts in reckless disregard of the truth or falsity of the information.

And no proof of specific intent to defraud is required.”

Claim: means “for the purposes of this policy, any request or demand, whether under a contract or otherwise, for money or property that is made to a contractor, grantee, or other recipient if the United States Government provides any portion of the money or property that is requested or demanded, or if the Government will reimburse such contractor, grantee, or other recipient for any portion of the money or property that is requested or demanded.”

Statement: means “for purposes of this policy, any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made:

- with respect to a claim or to obtain the approval or payment of a claim—including relating to eligibility to make a claim; or
- with respect to—including relating to eligibility for—(i) a contract with, or a bid or proposal for a contract with; or (ii) a grant, loan, or benefit from, an authority, or any State, political subdivision of a State, or other party, if the U. S. Government provides any portion of the money or property under the contract, grant, loan or benefit, or if the U.S. Government will reimburse the State, political subdivision, or party for any portion of the money or property under the contract, grant, loan, or benefit.”

Policy:**Federal False Claims Act**

MIHS Personnel will not knowingly:

- a) Submit or cause to be submitted a false or fraudulent statement or claim for payment to the U.S. Government;
- b) Make, use, or cause to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the U.S. Government;
- c) Conspire to defraud the U.S. Government by getting a false or fraudulent claim allowed or paid; or
- d) Knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the U.S. Government.

Arizona False Claims Acts

MIHS Personnel will not knowingly present or cause to be presented to the State of Arizona, a program contractor, or the administration of the Arizona Long-Term Care System (collectively the "System"):

- a) a claim for an item or service that MIHS knows or has reason to know was not provided as claimed;
- b) a claim for a medical or other item or service that the person knows or has reason to know is false or fraudulent;
- c) a claim for payment that the person knows or has reason to know may not be made by the System because:
 - the person was not a member of the System on the date for which the claim is being made;
 - the item or service claimed is substantially in excess of the needs of the individual or of a quality that fails professionally recognized standards of health care; or
 - the patient was not a member of the System on the date for which the claim is being made.
- d) a claim for a physician's service, or an item or service incidental to a physician's service, by a person who knew or had reason to know that the individual who furnished or supervised the furnishing of the service:
 - was not a licensed healthcare provider;
 - obtained the license through misrepresentation; or
 - represented to the patient at the time the service was furnished that the physician was certified in a medical specialty by a medical specialty board if the individual was not certified.
- e) a request for payment that MIHS knows or has reason to know is in violation of an agreement between MIHS and the System.

Federal and Arizona Penalties

Noncompliance with this policy can subject MIHS or MIHS Personnel to different types of penalties: (1) Federal administrative; (2) Federal and Arizona Civil and/or (3) Federal and Arizona Criminal.

Administrative Penalties

The administrative agency responsible for oversight of the Federal program, such as Medicare and Medicaid, may assess fines against MIHS or MIHS Personnel for failure to comply with the Federal False Claims Act. Penalties include, in addition to any other remedy that may be allowed by law, a civil penalty of not more than \$5,500 for each claim or statement. In addition, MIHS and/or the individual(s) may be required to pay damages of twice the amount of each inappropriate claim or statement.

Federal Civil Penalties

The Department of Justice may go to court to recover the following penalties from MIHS or MIHS Personnel:

- a) a civil penalty of not less than \$5,500 and not more than \$11,000; plus
- b) three (3) times the amount of damages to the U.S. Government as a result of the actions by MIHS or the individual(s).

Penalties may be reduced to not less than two (2) times the amount of damages to the Government as a result of the actions by MIHS or the individual(s) if:

- a) MIHS or the individual(s) that committed the violation provides to regulators or investigators all information known about the violation within thirty (30) days after the information is first received;
- b) MIHS or the individual(s) fully cooperated with any Government investigation of the violation; and
- c) no criminal, civil or administrative investigation of the violation had begun and MIHS or the individual(s) did not have actual knowledge of any investigation of the violation.

MIHS and/or the individual(s) will also be responsible for reimbursing the U.S. Government for the costs of a civil action brought to recover any penalty or damages.

Arizona Civil Penalties

Civil penalties may be assessed against MIHS or MIHS Personnel by the State of Arizona in an amount:

- a) not to exceed \$2,000 for each item or service claimed; plus
- b) two (2) times the amount of damages resulting from each item or service claimed.

Federal and Arizona Criminal Penalties

The United States Department of Justice and the Arizona Attorney General may pursue criminal prosecution of MIHS and/or the individual(s) for violations of the Federal and Arizona False Claims Acts also.

Whistleblowers

An individual can share in a percentage of a government recovery in a False Claims Act action or settlement.

- The whistleblower must file a qui tam lawsuit. Merely informing the government about the False Claims Act violation is not enough.
- The whistleblower who files a false claims act suit receives an award only if, and after, the government recovers money from the defendant as a result of the lawsuit.
- Generally, the court awards between 15 and 30 percent of the total recovery from the defendant, whether through a favorable judgment or settlement.

Federal and Arizona Whistleblower Protection Laws

Federal Whistleblower Protection Law

Federal Whistleblower Protection Laws exist to protect individuals who report suspected fraud, waste and abuse to a regulatory agency.

- a) Consistent with Federal law, MIHS will not discharge, demote, suspend, threaten, harass, or in any other manner discriminate against MIHS personnel in the terms and conditions of their employment because of lawful acts done by MIHS personnel in making a report under the Federal False Claims Act.
- b) Relief under Federal law entitles the employee to reinstatement at the same position, two (2) times the amount of back pay owed plus interest, and compensation for any special damages suffered because of the discrimination.

Arizona Whistleblower Protection Laws

Arizona law provides protections for those who report suspected violations of the Constitution of Arizona or the Arizona statutes. Consistent with Arizona law, MIHS will not terminate an employee for:

- a) refusing to violate the Constitution of Arizona or Arizona statutes; or
- b) making a good faith disclosure of suspicion or information that MIHS and/or MIHS Personnel is/are violating or will violate the Constitution of Arizona or Arizona statutes. The disclosure must be made to a person who the employee reasonably believes is in a position of authority to investigate or address the suspicion or information.

MIHS Non-Retaliation Policy

MIHS has adopted a "Non-retaliation" Policy that provides protection for MIHS personnel who make a good faith report of issues or concerns—including reports of suspected fraud, waste, and abuse. (See MIHS Administrative Policy/Procedure: 01105 S - Non-retaliation.)

MIHS Programs to Prevent and Detect Fraud

As part of the MIHS Compliance Program, MIHS has enacted a policy entitled, "Compliance Reporting" that provides a detailed procedure for identifying and reporting potential fraud and abuse. (See MIHS Administrative Policy/Procedure: 01104 S - Compliance Reporting.) Under this policy, MIHS personnel

are obligated to report suspected fraud and abuse, including false or misleading claims or statements, through either the chain-of-command, directly to the Compliance Office at x5915, or to the MIHS Compliance Hotline at 866-333-MIHS. The confidentiality of all calls to the Compliance Office and the Compliance Hotline is maintained to the fullest extent permitted by law.

Educating Employees, Medical Staff, Contractors and Agents on the MIHS False Claims Act Policy
MIHS will provide this MIHS False Claims Act Policy to all employees, Medical Staff, contractors, and agents with an opportunity for discussion about the policy.

References: Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a))
Federal False Claims Act 31 U.S.C. 3729-3733
A.R.S. 36-2918, 36-2957
A.R.S. 23-1501(3)(c)(i)-(ii)
A.R.S. 13-1802: Theft
A.R.S. 13-2002: Forgery
A.R.S. 13-2310: Fraudulent Schemes and Practices; Willful Concealment
A.R.S. 36-2918: Prohibited Acts
MIHS Administrative Policy/Procedure: 01104 S - Compliance Reporting
MIHS Administrative Policy/Procedure: 01105 S - Non-Retaliation

Keywords: Compliance Office, compliance reporting, Deficit Reduction Act, false claims, False Claims Act, non-retaliation, whistleblower