



## System

## Policy and Procedure

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|----------------------|--|-----------------------|-----------|
| <b>Title:</b>        | False Claims                             | <b>Number:</b>        | SY-CO-019 |
| <b>Applies to:</b>   | All SIH Employees                        | <b>First Created:</b> | 1/07      |
| <b>Issuing Dept:</b> | Compliance Department                    | <b>Last Revised:</b>  |           |
| <b>Approved by:</b>  | William F. Sherwood, VP, General Counsel |                       |           |

### I. POLICY

The Deficit Reduction Act of 2005 (DRA) was signed into law on February 8, 2006, in an attempt to reduce fraud, waste and abuse within the Medicaid program. The DRA requires organizations to create written policies that provide detailed information about the False Claims Act established under sections 3729 through 3733 of title 31, United States Code, administrative remedies for false claims and statements established under chapter 38 of title 31, United States Code, state laws pertaining to penalties and whistleblower protections, and organizational efforts to detect and prevent fraud, waste and abuse.

Southern Illinois Healthcare (SIH) is committed to the timely identification and resolution of any compliance issues that may adversely affect government programs, employees, patients, or the organization. The Corporate Compliance Program was developed in 1999 to assist in establishing a culture within SIH that promotes the prevention, detection, and resolution of instances of conduct that do not conform to federal and state law. Elements of the Compliance Program such as auditing, monitoring, education and the Compliance Helpline, reduce the potential for fraud and abuse. The *Compliance Helpline Policy (SY-CO-004)* and the *Non-Retaliation Policy for Reporting Compliance Violations (SY-CO-005)* were developed to assure employees and others that SIH is receptive and responsive to their concerns about potential fraud and abuse issues. In addition, the *SIH Code of Ethics and Conduct Policy (SY-AD-601)* promotes compliance with all legal and regulatory requirements, open and honest business practices and reporting of ethical and compliance violations.

### II. DEFINITIONS

**Abuse** - Practices that are inconsistent with accepted sound fiscal, business or medical practices, directly or indirectly, resulting in unnecessary costs to the Medicare and/or Medicaid program or improper reimbursement of services.

**Abusive Claim** - Claim with billing irregularities resulting from failure to follow sound business and/or medical practices that add unnecessary cost to the Medicare and Medicaid programs.

**Claim** - A request, demand or submission made to an insurer for compensation for goods and/or services provided to the insured.

**Compliance Helpline** - A phone line dedicated to receiving reports of potential compliance violations, including false claims and other fraud and abuse.

**False Claim** - Fraudulent or abusive claim, including but not limited to request for payment for services not provided, coding irregularities or billing errors due to a failure to follow sound business practices.

**Fraud** - Knowingly and willfully executing or attempting to execute a scheme 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, in connection with the delivery of or payment for health care benefits, items or services.

**Fraudulent Claim** - Claim for which services were not provided or the services provided were different from those on the claim. Fraud involves an intentional deception or misrepresentation that could result in an unauthorized benefit to someone or to an entity.

**Knowingly, knows or has reason to know** - For purposes of establishing liability under False Claims laws, means that a person, with respect to a claim or statement, has actual knowledge that a claim or statement is false, fictitious or fraudulent; acts in deliberate ignorance of the truth or falsity of the claim or statement; or acts in reckless disregard of the truth or falsity of the claim or statement.

**Retaliation** - Any negative action taken against an individual specifically for reporting a compliance violation. Actual harm to the reporting individual is not necessary for the action to be considered retaliation.

**Violation of Corporate Compliance Program** - An action, process, or behavior that results in a violation of or is contrary to federal law, rules, or regulations; state law, rules, or regulations; federal, state, and private payor healthcare program requirements; SIH's Corporate Compliance Plan; SIH policy; or SIH's Code of Ethics.

**Whistleblower** - An individual who possesses and comes forward with information regarding false claims.

### III. RESPONSIBILITIES

#### 1. Corporate Compliance Officer

- a. Maintain an open door policy and the Compliance Helpline to allow individuals to report actual or perceived violations of the Corporate Compliance Program.
- b. Act upon reports of actual or perceived compliance violations, including reports of retaliation against individuals, promptly and in an appropriate manner.
- c. When an act of retaliation is confirmed, collaborate with Human Resources so that the individual can be disciplined accordingly.
- d. Conduct audits, investigations and annual risk assessment to prevent, detect and resolve any instances of non-compliance with federal and state law, including fraud, waste or abuse.
- e. Maintain and update False Claims Act information in the SIH employee handbook and training materials.

#### 2. Employees

- a. Promptly report actual or perceived violations of the Corporate Compliance Program, including fraud, waste and abuse, to management, the Corporate Compliance Officer, or Compliance Helpline.
- b. Promptly report acts of retaliation against an individual for reporting a compliance violation.

#### 3. Managers/Supervisors

- a. Maintain an "open-door policy" and take measures that encourage the reporting of compliance violations.
- b. Promptly report actual or alleged violations of the Corporate Compliance Program, including fraud, waste and abuse, to the Compliance Officer.
- c. Implement and maintain policies and procedures to reduce the likelihood of fraud, waste, and abuse.
- d. Promptly report acts of retaliation against an individual for reporting a compliance violation to the Compliance Officer.

### IV. EQUIPMENT/MATERIALS

N/A.

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## V. PROCEDURE

### 1. False Claims Acts

#### a. Federal

- i. The federal *False Claims Act* (FCA) (31 U.S.C. §3729 et seq.) has existed since the Civil War, when the government noticed that companies were selling faulty war supplies to the Union Army. Today this Act exists to fight fraudulent, abusive or false claims, including those submitted to the Medicare and Medicaid programs.
- ii. In general, the *False Claims Act* prohibits any person from submitting a false claim for payment or approval under a federally funded contract or program.

#### b. Illinois

- i. The false claims act in Illinois is entitled *Whistleblower Reward and Protection Act* (740 ILCS 175/1, et seq.). Like the *False Claims Act*, this Act does not apply to claims made under the Illinois Income Tax Act but covers fraud involving any state funded contract or program. Also, the *Public Assistance Fraud Act* (305 ILCS 5/8A-1, et seq.) makes it a Class A misdemeanor to make false statements “relating to health care delivery.”

### 2. Administrative Remedies and Penalties

#### a. Federal

- i. Under the *False Claims Act*, anyone who knowingly submits or causes the submission of false claims to the government is liable for damages of up to three times the erroneous payment, plus civil penalties of \$5,500 to \$11,000 per false claim<sup>1</sup>.

#### b. Illinois

- i. Under the *Whistleblower Reward and Protection Act*, anyone who knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid is liable to the State for a civil penalty of not less than \$5,500 and not more than \$11,000, plus three times the amount of damages sustained by the State.<sup>2</sup> The *Public Assistance Fraud Act* allows the State to recover any excess payments along with interest and other penalties, including possible prohibition from participation in any state health plans. The *Insurance Claims Fraud Prevention Act* allows the State, an insurer or a private individual to bring an action against anyone that makes a false claim, causes a false claim to be made against an insurer or a self-insured entity or against anyone who offers or pays any remuneration to induce any person to procure clients or patients to obtain services or benefits under a contract of insurance.

### 3. Whistleblower

#### a. Federal

- i. A private individual, who possesses and comes forward with information regarding false claims, may bring an action in federal court on behalf of the government and sue those entities that engaged in the fraud. This is called a “*qui tam*” suit, and the individual who brings it to court is known as the whistleblower or “relator”. Depending upon the outcome of their own investigation, the government then decides whether to join the whistleblower in prosecuting the case. If the case is successful, the whistleblower may share in the recovery.

#### b. Illinois

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<sup>1</sup> 28 C.F.R. Section 85.3(a)(9) (1999); 31 U.S.C. Section 3729(a)

<sup>2</sup> 740 ILCS 175, et seq.

- i. Any person (or whistleblower) may bring a civil action for a false claim. The State may elect to intervene and proceed with the action, or the action may be dismissed if the court and the Attorney General give written consent. If the State proceeds with the action, the whistleblower may receive a percentage of the proceeds of the action or settlement of the claim, depending upon the extent to which the person contributed to the prosecution of the action.

#### 4. Protections for Whistleblowers

##### a. Federal and Illinois

- i. The *False Claims Act*, the *Illinois Whistleblower Reward and Protection Act* and the *Illinois Whistleblower Act* (740 ILCS 174/1 et seq.) provide a remedy for whistleblowers who are discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against in the terms and conditions of employment by his or her employer in retaliation for filing a *qui tam* lawsuit or for disclosing information to a government or law enforcement agency, where the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule, or regulation. Under the *Illinois Whistleblower Reward and Protection Act*, if the court finds a whistleblower was terminated or otherwise mistreated for filing a *qui tam* lawsuit, the employee is entitled to reinstatement at the same level, two times the back pay owed plus interest, and other compensation, such as attorney's fees.<sup>3</sup> Under the *Illinois Whistleblower Act*, if an employer takes any action against an employee in violation of the act, the employee may be entitled to the following relief: (1) reinstatement with the same seniority status that the employee would have had, but for the violation; (2) back pay, with interest; and (3) compensation for any damages sustained as a result of the violation, including litigation costs, expert witness fees, and reasonable attorney's fees.<sup>4</sup>

##### b. SIH Policy for Non-Retaliation

- i. SIH has a strict non-retaliation policy for individuals wishing to report compliance violations, including suspected fraud, waste and abuse. Any retaliation against an individual for reporting in good faith an actual or perceived compliance violation is a violation of the Compliance Program and will result in disciplinary action. For more information, see *Non-Retaliation Policy for Reporting Compliance Violations*, SY-CO-005.

#### 5. SIH Efforts to Prevent and Detect Fraud and Abuse

##### a. Compliance Program

- i. SIH is committed to the timely identification and resolution of any compliance issues that may adversely affect government programs, employees, patients, or the organization. The Corporate Compliance Program was developed in 1999 to assist in establishing a culture within SIH that promotes the prevention, detection, and resolution of instances of conduct that do not conform to federal and state law. The following elements of the Compliance Program reduce the potential for fraud and abuse.
  1. Auditing and Monitoring – The SIH Compliance Department conducts an annual risk assessment to identify and prioritize risk areas to be audited and/or monitored and performs audits in order to prevent or detect fraud, waste, or abuse, particularly with regard to the claims development and submission process.
  2. Compliance Helpline – Open lines of communication are essential to the prevention and detection of fraud, waste, and abuse. The SIH Compliance Department maintains a confidential, toll-free number for any person to call with questions or concerns related to compliance with internal or external policies, laws or

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<sup>3</sup> 740 ILCS 175/4(g)

<sup>4</sup> 740 ILCS 174/30

regulations. All reports to the Compliance Helpline are followed up by the SIH Compliance Department. For more information, see the policy, *Compliance Helpline*, SY-CO-004. Employees may use the Compliance Helpline without fear of retaliation, as noted in section V.4.b above.

3. Education – The SIH Compliance Department provides training for all SIH workforce members on elements of the Compliance Program, including fraud and abuse detection and prevention.

6. Reporting Fraud and Abuse Concerns

- a. If an employee has knowledge of an actual or potential compliance violation, he/she must report the information to his/her supervisor, the Compliance Department, or the Compliance Helpline immediately. Failure to do so may result in disciplinary action. See *Improvement Counseling*, SY-HR-401.
- b. Any person who is not an employee of SIH may also use the Compliance Helpline.
- c. The Compliance Helpline telephone numbers are 1-800-965-4583 (toll free) or 618-529-2540.
- d. As stated in section V.3 above, any person with information regarding false claims may become a whistleblower or “relator”. Further information on the process may be found in the legislation cited above.

**VI. DOCUMENTATION**

N/A.

**VII. CHARGES**

N/A.

| <b>Additional Approvals and Review/Revision Dates</b> |   |  |                        |
|---|---|--|------------------------|
| <b>Review Dates:</b>                                  |   |  |                        |
| <b>Revision Dates:</b>                                |   |  |                        |
| <b>Replaces:</b>                                      | N/A   |  |                        |
| <b>Additional Approvals:</b>                          | <b>Name (print)</b> _____<br>April Holmes, Director | <b>Title</b> _____<br>Corporate Compliance Officer | <b>Signature</b> _____ |