MEMORIAL HERMANN HEALTH SYSTEM
POLICY

POLICY TITLE: False Claims Policy

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VERSION: 3

POLICY PURPOSE:

To comply with certain requirements set forth in the Deficit Reduction Act of 2005 with regard to federal and state false claims laws.

POLICY STATEMENT:

Memorial Hermann Health System ("MHHS") will ensure that all employees (including management) and any contractors or agents are educated regarding the federal and state false claims statutes and the role of such laws in preventing and detecting fraud, waste, and abuse in federal health care programs.

This policy summarizes the false claims laws and MHHS policies and procedures for detecting and preventing fraud, waste, and abuse.

FALSE CLAIMS LAWS:

One of the primary purposes of false claims laws is to combat fraud, waste, and abuse in government health care programs. False claims laws do this by making it possible for the government to bring civil actions to recover damages and penalties when health care providers submit false claims.

These laws often permit qui tam suits as well, which are lawsuits brought by private parties on behalf of the government.

Federal False Claims Act (31 U.S.C. §§3729-33)

Under the federal False Claims Act, any person or entity that knowingly presents or causes to be presented a false or fraudulent claim for payment of United States Government funds, or knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim is liable for significant penalties and fines. In addition, failure to repay an overpayment within 60 days of identification can also be considered a violation of the False Claims Act.

Under the statute, "knowing" and "knowingly" mean that a person, with respect to information:

- Has actual knowledge of the information,
- 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.

No proof of specific intent to defraud is required.

"Identification" of an overpayment occurs when a person has or should have, through the exercise of reasonable diligence, determined that an overpayment has been received and quantified the amount of the overpayment.

The damages and penalties available under the False Claims Act are:

- Repayment of any benefits received.
- A penalty of up to three times the government's damages.
- Civil penalties ranging from $10,781 to $21,563 per false claim.
- The costs of the civil action against the entity that submitted the false claims.
- Providers can also be excluded from participation in federal health care programs.

The federal False Claims Act applies to any federally funded program, including claims submitted by health care providers to Medicare or Medicaid.

Program Fraud and Civil Remedies Act of 1986 (31 U.S.C. §38)

The Program Fraud Civil Remedies Act of 1986 ("PFCRA") is a federal law which provides for administrative remedies against a person who makes, presents, or submits, or causes to be made, presented, or submitted a false claim or statement. For example, a claim violates PFCRA if it is submitted for payment of services that were not provided or includes or is supported by a written statement that is false or omits a material fact. A violation of PFCRA results in a maximum civil penalty of $10,781 per claim plus an assessment of up to twice the amount of each false or fraudulent claim. This penalty amount may be adjusted for inflation.

Texas Medicaid Fraud Prevention Act (Texas Human Resources Code §36)

Texas has a state version of the False Claims Act that is substantially similar to the federal False Claims Act. The actions that trigger civil and criminal penalties under the Texas Act generally mirror those of the federal False Claims Act. However, under the Texas Medicaid Fraud Prevention Act, a person may also be liable if he or she presents a claim for payment under the Medicaid program for a product or service that was rendered by an unlicensed provider or that has not been approved by a health care practitioner.

Under the statute, a person acts "knowingly" with respect to information if he or she:

- Has knowledge of the information,
- Acts with conscious indifference to the truth or falsity of the information, or
- Acts in reckless disregard of the truth or falsity of the information.

The damages and penalties available under the Texas Medicaid Fraud Prevention Act include:

- Reimbursement with interest to the State of Texas for the value of any benefit provided under the Medicaid program.
- Civil penalties ranging from $10,781 to $21,563 per violation.
- A penalty of two times the value of any benefit provided under the Medicaid program.

Whistleblower Protections

One of the unique aspects of the federal False Claims Act is the “qui tam” provision, commonly referred to as the “whistleblower” provision. This provision allows a private person with knowledge of a false claim to bring a civil action on behalf of the United States Government. The purpose of bringing a qui tam suit is to recover the funds paid by the government as a result of the false claims. Sometimes the United States Government decides to join the qui tam suit. If the suit is ultimately successful, the whistleblower who initially brought the suit may be awarded a percentage of the funds recovered. The court may reduce the whistleblower’s share of the proceeds if the court finds that the whistleblower planned and initiated the false claims violation. Further, if the whistleblower is convicted of criminal conduct related to his or her role in the preparation or submission of the false claims, the whistleblower will be dismissed from the civil action without receiving any portion of the proceeds.

The federal False Claims Act also contains a provision that protects a whistleblower from retaliation by his or her employer. This provision applies to any employee who is discharged, demoted, suspended, threatened, harassed, or discriminated against in his or her employment as a result of the employee’s lawful acts in furtherance of a false claims action. The whistleblower may bring an action in the appropriate federal district court and is entitled to reinstatement with the same seniority status, two times the amount of back pay, interest on the back pay, and compensation for any special damages resulting from the discrimination (such as litigation costs and reasonable attorney’s fees).

The Texas Medicaid Fraud Prevention Act also includes a whistleblower provision. Like the federal False Claims Act, the Texas law includes provisions to prevent employers from retaliating against employees who report false claims.

REPORTING FRAUD, WASTE, AND ABUSE CONCERNS:

MHHS employees have a responsibility to immediately report misconduct, including actual or potential violations of laws, regulations, policies, procedures, or the Standards of Conduct. All MHHS employees, management, and contractors or agents should (1) be aware of the laws regarding false claims and fraud, waste, and abuse and (2) take steps to identify, report, and resolve any issues immediately.

MHHS encourages its employees, managers, and contractors to report concerns to their immediate supervisor when appropriate. If the supervisor is not deemed to be the appropriate contact or if the supervisor fails to respond quickly and appropriately to the concern, then the individual with the concern should discuss the matter with another member of management, contact the MHHS Chief Compliance Officer, or contact the MHHS Compliance Helpline (713-338-4140 or 1-877-448-4140).

MHHS does not tolerate retaliation for reporting compliance concerns in good faith. Accordingly, MHHS has adopted a strict non-retaliation policy to protect employees and others who report problems and/or concerns.

DETECTION AND PREVENTION:

MHHS employees (including management) and any contractors or agents of MHHS should be aware of related facility and/or corporate administration policies or procedures addressing the detection and prevention of health care fraud, waste, and abuse. These policies and procedures can be accessed from the MHHS Policies and Procedures section of OneSource or the Corporate Compliance Homepage on OneSource.

Other MHHS policies and procedures that address the prevention and detection of fraud, waste, and abuse include:

- Corporate Compliance
- Helpline/Whistleblower Policy
- Helpline/Whistleblower Procedure
- Problem Reporting and Non-Retaliation Policy
- Problem Reporting: Investigation and Remediation Policy
- Problem Reporting: Investigation and Remediation Procedure
- General Sanction Screening

The MHHS Standards of Conduct also provide guidance on topics relevant to the detection of health care fraud, waste, and abuse, including:

- Compliance with laws and regulations
- Billing and coding standards
- Relationships with physicians, vendors, contractors and patients
- The Compliance Helpline and Non-Retaliation
- Responsibilities of employees and management

The MHHS Standards of Conduct, as well as all statutes, regulations, guidelines, and MHHS policies and procedures, must be observed by everyone, including employees, medical staff, vendors, and contractors. The Standards of Conduct are available on the Corporate Compliance Homepage on OneSource and on www.memorialhermann.org.

MHHS investigates allegations of fraud, waste, and abuse and ensures that appropriate corrective action is taken as necessary to address compliance concerns and to prevent similar problems from occurring in the future. Disciplinary action is undertaken when appropriate.

EDUCATION:

All MHHS employees are required to complete training on fraud, waste, and abuse upon hire and annually thereafter. This training includes a quiz to test for comprehension of the training material. Employees are also required to familiarize themselves with this policy and others pertaining to fraud, waste and abuse.

MHHS contractors and agents are provided with this policy and other educational information regarding the prevention of fraud, waste, and abuse and may be required to complete fraud, waste, and abuse training, as determined by MHHS.

SCOPE:

This policy applies to (i) Memorial Hermann Health System (“MHHS”), (ii) all facilities and entities wholly-owned by MHHS, and (iii) all facilities and entities controlled and operated by MHHS.