

Valleywise Health Administrative Policy & Procedure

Effective Date: 10/06

Reviewed Dates: 11/11, 11/17, 09/18, 01/20

Revision Dates: 02/08, 01/10, 06/15, 09/15, 11/17, 12/21, 12/23, 03/24

Policy #: 01111 S

Policy Title: Compliance: False Claims Act

Scope: [] District Governance (G)
[X] System-Wide (S)
[] Division (D)
[] Multi-Division (MD)
[] Department (T)
[] Multi-Department (MT)
[] FQHC (F)

Purpose:

The purpose of this policy is to provide guidance to Valleywise Health personnel, including employees, Medical Staff, contractors, and agents ("Personnel"), on the False Claims Act; the Administrative Remedies under the Act; and the legal protection under Federal/State law(s) given to personnel who report incidents of false claims to regulatory agencies ("whistleblower protection"), as required by the Deficit Reduction Act of 2005.

Definitions:

Advanced Practice Clinicians (APCs): Individuals other than Medical Staff members who are licensed healthcare professionals who are board certified and have at least a master's degree. APCs are trained to practice medicine and prescribe within the scope of their training as outlined by their specific scope of practice and are authorized by law and by the Hospital to provide patient care services.

Allied Health Professionals (AHPs): Individuals other than Medical Staff members or APCs who are qualified by training, experience, and current competence in a discipline permitted to practice in the hospital and are authorized by law and by the Hospital to provide patient care services.

Clinical Privileges or Privileges: The authorization granted by the Board to render specific patient care services, for which the Medical Staff leaders and Board have developed eligibility and other privileging criteria and focused and ongoing professional practice evaluation standards.

House Staff: Includes residents, fellows, and Individuals licensed as appropriate, who are graduates of medical, allopathic, and osteopathic, dental, or podiatric schools; who are appointed to a hospital's professional graduate training program that is approved by a nationally recognized accrediting body; and who participate in patient care under the direction of Member of the Medical Staff of the pertinent clinical disciplines with appropriate clinical privileges in the hospital.

Medical Staff: All physicians, dentists, oral surgeons, and podiatrists who have been appointed to the Medical Staff by the Board. Medical Staff are also referred to as Attendings.

Provider: A Medical Staff Member with Clinical Privileges, Resident, Advanced Practice Clinician or Allied Health Professional.

False Claims Act Definitions:

"Knowing" and "knowingly": means that a person 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; and requires no proof of specific intent to defraud;

"Claim": means, and as applicable to Arizona Statutes, any request or demand, whether under a contract or otherwise, for money or property; whether or not the United States has title to the money or property that:

- is presented to an officer, employee, or agent of the United States; or is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the Government's behalf or to advance a Government program or interest, and if the United States Government:
 - provides or has provided any portion of the money or property requested or demanded; or
 - will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded; and
- does not include requests or demands for money or property that the Government has paid to an individual as compensation for Federal employment or as an income subsidy with no restrictions on that individual's use of the money or property.

An "obligation": is defined as an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment.

Government – means any federal and or state agency. i.e., Department of Justice, Department of Health and Human Services, Centers for Medicare and Medicaid Services, Office of Inspector General, and other related agencies.

Policy:

The Maricopa County Special Health Care District, d.b.a., Valleywise Health and all of its affiliates, take health care fraud and abuse very seriously. Valleywise Health is committed to following all applicable laws and regulations, in particular those that address health care fraud, waste and abuse and the proper billing of Medicare, Medicaid and other government funded health care programs.

Procedure:

A. Valleywise Health Personnel will not:

1. Knowingly submit or cause to be submitted a false or fraudulent statement or claim for payment to the U.S. Government;
2. Knowingly 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;
3. Conspire to defraud the U.S. Government by getting a false or fraudulent claim allowed or paid; or
4. Knowingly make, use, or cause 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.
5. Knowingly and improperly avoid or decrease an obligation to pay or transmit money or property to the government.

B. Once Valleywise Health knows of an overpayment, it must:

1. Report and return the overpayment,
2. Provide notice in writing to the entity to which the overpayment was returned regarding the reason for the overpayment,
3. The overpayment must be returned within sixty (60) days "after the date Valleywise Health knew of the overpayment", and
4. Retention of an overpayment beyond sixty (60) days creates an obligation as defined in 31 USC §3729(b)(3).

C. Noncompliance with this policy can subject Valleywise Health Personnel to different types of penalties: (1) Federal Administrative; (2) Federal Civil; and/or (3) Federal Criminal. Exception: The FCA covers fraud involving any federally funded contract or program, with the exception of tax fraud.

1. Federal Administrative Penalties (and as applicable to Arizona Statutes)
 - a. The administrative agency responsible for oversight of the Federal program, such as Medicare and Medicaid, may assess fines against Valleywise Health Personnel for failure to comply with the Federal False Claims Act.
 - b. Penalties include, in addition to any other remedy that may be allowed by law, a civil penalty of not more than \$12,537 (May 2022) for each claim or statement.
 - c. In addition, Valleywise Health and/or the individual(s) may be required to pay damages of twice the amount of each inappropriate claim or statement.

2. Federal Civil Penalties (and as applicable to Arizona Statutes)
 - a. The Department of Justice may go to court to recover the following penalties from Valleywise Health Personnel:
 - b. A civil penalty of not less than \$13,946 (February 2024) and not more than \$27,894 (February 2024; plus
 - c. Three (3) times the amount of damages (i.e., “treble damages”) to the U.S. Government as a result of the actions by Valleywise Health or the individual(s).
 - d. 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 Valleywise Health or the individual(s) if:
 - i. Valleywise Health 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;
 - ii. Valleywise Health or the individual(s) fully cooperated with any Government investigation of the violation; and
 - iii. No criminal, civil or administrative investigation of the violation had begun and Valleywise Health or the individual(s) did not have actual knowledge of any investigation of the violation.
 - iv. Valleywise Health 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.
3. Federal Criminal Penalties (and as applicable to Arizona Statutes)

The United States Department of Justice may pursue criminal prosecution of Valleywise Health and/or the individual(s) for violations of the Federal False Claim Act.

D. Whistleblowers (and as applicable to Arizona Statutes)

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

1. The whistleblower must file a qui tam lawsuit. Merely informing the government about the False Claims Act violation is not enough.
2. 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.
3. Generally, the court awards between 15 and 30 percent of the total recovery from the defendant, whether through a favorable judgment or settlement.

E. Whistleblower Protection Law (and as applicable to Arizona Statutes)

1. Whistleblower Protection Laws exist to protect individuals who report suspected fraud, waste, and abuse to a regulatory agency.
2. Consistent with Federal/State law(s), Valleywise Health will not discharge, demote, suspend, threaten, harass, or in any other manner discriminate against Valleywise Health personnel in the terms and conditions of their employment because of lawful acts done by

Valleywise Health personnel in making a report under the Federal False Claims Act.

3. Valleywise Health personal are entitled to any and all relief as provided under Federal/State statute(s) Whistleblower protections.

F. Non-Retaliation Policy

Valleywise Health has adopted a “Non-retaliation” Policy that provides protection for Valleywise Health personnel who make a good faith report of issues or concerns—including reports of suspected fraud, waste, and abuse.

G. Valleywise Health Programs to Prevent and Detect Fraud.

As part of the Valleywise Health Compliance Program, Valleywise Health has enacted a policy entitled, “Compliance Reporting” that provides a detailed procedure for identifying and reporting potential fraud and abuse. Refer to policy on Compliance Reporting in Compliance 360.

Under this policy, Valleywise Health 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, or to the **Valleywise Health Compliance Hotline at 866-333-6447**. The confidentiality of all calls to the Compliance Office and the Compliance Hotline is maintained to the extent permitted by law.

H. Educating Employees, Medical Staff, Contractors, and Agents on the Valleywise Health False Claims Act Policy

Valleywise Health will provide the Valleywise Health False Claims Act Policy to all employees, Management, Medical Staff, contractors, and agents annually during compliance training.

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)
 Deficit Reduction Act of 2005 (PUB, L. No.109-71)
 The American Reinvestment and Recovery Act of 2009 (ARRA) (PUB, L.No.111-5)
 A.R.S. 13-1802: Theft
 A.R.S. 13-2002: Forgery
 A.R.S. 13-2310: Fraudulent schemes and artifices; classification; definition
 A.R.S. 13-2311: Fraudulent schemes and practices; willful concealment
 A.R.S. 36-2918: Prohibited Acts
 Valleywise Health Administrative Policy/Procedure: 01104 S - Compliance Reporting
 Valleywise Health Administrative Policy/Procedure: 01105 S - Non-Retaliation

Federal Register – Civil Monetary Penalties Inflation Adjustments for 2024:

<https://www.federalregister.gov/documents/2024/02/12/2024-02829/civil-monetary-penalties-inflation-adjustments-for-2024>

Table 1 to § 85.5						
U.S.C. citation	Name/description	CFR citation	DOJ penalty assessed after 12/13/2021 (\$)	DOJ penalty assessed after 5/9/2022 (\$)	DOJ penalty assessed after 1/30/2023 FN1 (\$)	DOJ penalty assessed after 2/12/2024 FN2 (\$)
ATF						
18 U.S.C. 922(t)(5)	Brady Law—Nat'l Instant Criminal Check System (NICS); Transfer of firearm without checking NICS		8,935	9,491	10,226	10,557
18 U.S.C. 924(p)	Child Safety Lock Act; Secure gun storage or safety device, violation		3,268	3,471	3,740	3,861
Civil Division						
12 U.S.C. 1833a(b)(1)	Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) Violation	28 CFR 85.3(a)(6)	2,073,133	2,202,123	2,372,677	2,449,575
12 U.S.C. 1833a(b)(2)	FIRREA Violation (continuing) (per day)	28 CFR 85.3(a)(7)	2,073,133	2,202,123	2,372,677	2,449,575
12 U.S.C. 1833a(b)(2)	FIRREA Violation (continuing)	28 CFR 85.3(a)(7)	10,365,668	11,010,620	11,863,393	12,247,886
22 U.S.C. 2399b(a)(3)(A)	Foreign Assistance Act; Fraudulent Claim for Assistance (per act)	28 CFR 85.3(a)(8)	6,021	6,396	6,891	7,114
31 U.S.C. 3729(a)	False Claims Act; FN3 Violations	28 CFR 85.3(a)(9)	Min 11,803, Max 23,607	Min 12,537, Max 25,076	Min 13,508, Max 27,018	Min 13,946, Max 27,894

Valleywise Health Policy & Procedure - Approval Sheet
(Before submitting, fill out COMPLETELY.)

POLICY RESPONSIBLE PARTY: Chief Compliance Officer

DEVELOPMENT TEAM(S): Compliance and Legal Departments

Policy #: 01111 S

Policy Title: Compliance: False Claims Act

e-Signers: L.T. Slaughter, Jr., Chief Compliance Officer

Place an X on the right side of applicable description:

New -

Retire -

Reviewed -

Revised with Minor Changes - X

Revised with Major Changes -

Please list revisions made below: (Other than grammatical changes or name and date changes) Updated definitions and civil monetary penalties.

List associated form(s): (If applicable)

Reviewed and Approved by in Addition to Responsible Party and E-Signer(s):

Committee: System-wide Policy & Procedure	03/24
Committee:	00/00
Committee:	00/00
Reviewed for EPIC:	N/A
Other:	00/00
Other:	00/00
Other:	00/00