



10.02 OPERATING POLICY & PROCEDURE

Subject: Compliance Monitoring and Investigation		Application: All Departments
First Effective 1/01/14	Revised 11/23/15	Review 11/20/2023

PURPOSE

To establish guidelines for Pivotal and its provider network regarding the filing of a Complaint of suspected compliance violations and the process in conducting compliance investigations.

DEFINITIONS

Abuse

As it pertains to compliance, means a pattern of behavior resulting in the submission of inappropriate, unfounded, or illegal claims, with a frequency greater than that which could be reasonably considered a mistake.

Alleged Wrongdoing

Conduct which, on its face, appears to be in conflict with a required law, regulation or agency policy (see "wrongdoing").

Complaint

Any report of alleged or suspected "wrongdoing"

Complainant

The individual reporting the alleged compliance wrongdoing or improper conduct. A reporting person can be any agency officer, board member, full-time, part-time and temporary employee, volunteer, student, applicant for employment, provider, vendor, contractor and any other person or entity that may become part of or affiliated with provider network in the future.

Complaint Investigator

The Local Compliance Officer or his/her representative, who is charged to investigate a Complaint and produce a Complaint Investigation Report.

Complaint Investigation Report

The written report issued by the Compliance Office designates a summary of the facts learned in the compliance investigation including any findings and follow-up action/recommendations.

Corporate Compliance

Consists of the mechanisms, including the written Compliance Program and Policies, that are collectively intended to prevent and detect unethical and/or illegal business practices and violations of law.

Disclosure

The process by which a Reporting Person reports that some organization or person has committed, or appears to have the intention to commit, wrongdoing.

Dissemination

The process by which information is spread widely.

Fraud

An intentional deception or misrepresentation made by a person or corporation with the knowledge that the deception could result in some unauthorized benefit to himself, the corporation, or some other person. It also includes any act that constitutes fraud under applicable federal or state health care fraud laws.

FWA

The federal term contained in the Deficit Reduction Act (DRA) that refers to any event pertaining to an alleged or actual wrongdoing of fraud, waste or abuse (i.e., generically known as "FWA").

Health Information

Any information, whether oral or recorded in any form or medium that: (a) is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and that (b) relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual.

Inquiry

An informal process whereby a person makes the Compliance Office aware of a potential compliance related concern and the Compliance Officer examines the concern to determine if it merits a formal complaint and investigation. If the outcome of the *inquiry* determines that the matter is not FWA related, the Compliance Officer will document the *inquiry* and outcome, and take any action necessary to rectify the concern. Conversely, if the outcome of the *inquiry* determines that a formal investigation is warranted, the Compliance Officer will convert the informal *inquiry* into a formal complaint and will conduct a formal investigation in accordance with the policy investigation guidelines.

Knowing

Defined under the federal False Claims Act (FCA) to include the willful disregard of a regulation imposed upon an organization, the "deliberate ignorance" of the regulation's propriety, the submission of a claim in "reckless disregard" of the truth, or the falsity of claim. Managerial staff of the provider organization can be held accountable in situations where they refuse to explore a credible concern about the compliance requirements for a particular business or clinical practice, or a submitted bill or claim requiring use of federal funds for its reimbursement.

Protected Healthcare Information (aka "Confidential Information")

All personally identifiable information and material about a recipient in any form or medium, and the information that an individual is or is not receiving services.

Provider

Any healthcare organization or individual practitioner that furnishes or renders health care services or items within the agency network for which Medicaid or Medicare reimbursement will be sought. A Provider may also be a person who performs billing or coding functions or is involved in the reporting of health care services into the PIHP or to an affiliate CMH or CMS.

Qui Tam Provision

The federal False Claims Act (FCA) allows any person with direct knowledge of a false claim to bring a civil suit on behalf of the United States Government, known as a “*Qui Tam*” action. It derives from the Latin phrase “*qui tam pro domino rege quam pro se ipso in hac parte sequitur*,” meaning “he who sues for the king as well as for himself.” The individual must first formally notify the Department of Justice of the suspected fraud. The Department of Justice then has the option of either intervening in and prosecuting the action or allowing the individual to proceed on his/her own. If the suit is ultimately successful, the individual who initially brought the suit may be awarded a percentage between 15- 30% of the funds recovered.

Waste

Practices that are inconsistent with sound fiscal, business or clinical (medical) practices, and result in unnecessary cost to public agencies (e.g., CMS, MDHHS, SWMBH/PIHP, etc.), including, but not limited to practices that result in reimbursement for services that are not medically necessary, or that fail to meet professionally recognized standards for health care.

Whistleblower

A person who tells someone in authority about alleged dishonest or illegal activities (misconduct) occurring in a government department, a public or private organization, or a company. The alleged misconduct may be classified in many ways; for example, a violation of a law, rule, regulation and/or a direct threat to public interest, such as fraud, health/safety violations, and corruption.

Wrongdoing

An act or omission concerning (a) a violation of any law or regulation; (b) a breach of the Code of Ethical Conduct of Pivotal; (c) knowing non-compliance with a Pivotal policy; (d) misuse of public funds or assets; (e) mismanagement of a nature sufficiently substantive which would lead one to reasonably believe that such mismanagement would have a potentially harmful impact on Pivotal’s work, reputation or operations; or (f) conduct which includes such behaviors as intimidation, harassment and other unethical behavior. Under the federal Deficit Reduction Act (DRA), “wrongdoing” may be either an intentional act or an unintentional act (i.e., omission).

POLICY

It shall be the policy of Pivotal to vigorously combat fraud, waste and abuse (FWA) in federal and state healthcare programs by (a) establishing a Compliance Program; (b) providing information on federal and state criminal and civil laws and regulations that punish prohibited activities; (c) providing information on federal and state laws and regulations that protect individuals who report fraud, waste and abuse from retaliation; and (d) informing officers/board members, employees, providers, contractors and other representative agents to combat fraud, waste and abuse.

It shall also be the policy of Pivotal that any officer/board member, employee, provider, contractor, student, volunteer, or other party affiliated with Pivotal who suspects or has knowledge of fraud, waste or abuse must immediately report it to the Compliance Office. All organizational providers who receive Medicaid/Medicare funds shall ensure adherence to this policy guideline and shall be responsible for assuring that their officers/board members, employees, contractors, and agents comply with all applicable laws, and with all policies applicable to their organization.

PROCEDURE

A. *Inquiry*

Pivotal recognizes that not all reported compliance related concerns may meet the threshold of a Fraud, Waste or Abuse (FWA) complaint. Such concerns shall be classified as an *inquiry*. *Inquiries* shall be informally managed, resolved, and documented by the local Compliance Office, but shall not become part of the official public record of the Compliance Office. Moreover, concerns classified as an *inquiry* shall not become part of the official reports of the PIHP.

B. *Reporting Thresholds*

The local Pivotal Board and Executive Director are charged with the ultimate responsibility for addressing any FWA issues in their sub-network and the Local Compliance Officer is accountable to their authority. Local Compliance Officers are encouraged to contact the PIHP Compliance Office to discuss any compliance issue/concern at any time whether the concern is required to be reported or not. Under SWMBH policy 10.8, Pivotal will report within three days compliance issues consistent with Fraud, Waste, and Abuse allegations to SWMBH CCO. These expectations are in no way intended to nor should it be interpreted as a requirement or request to violate the letter or spirit of Federal or Michigan reporting and whistleblower statutes or related regulations.

C. *Reporting and Response*

1. All persons affiliated with Pivotal (e.g., officers/board members, employees, providers, students, volunteers, etc.) have the responsibility to report any suspected wrongdoing through the Compliance Program. Persons have many options to report a concern:
 - a. Persons affiliated with Pivotal, and its provider network may contact the local Compliance Office, the PIHP Compliance Office, or submit a complaint on the designated form. Contacting persons may choose to remain anonymous.
 - b. Community-at-large persons are also encouraged to report wrongdoing on matters involving Pivotal or one of its network Providers.
 - c. Employees may report their concern directly to the local CMH Compliance Officer, directly to the PIHP Compliance Officer or their direct supervisor (if not involved in the alleged misconduct).
2. Pivotal and all providers shall fully cooperate with all legal authorities concerning compliance investigations. Matters related to responding to subpoenas, search warrants, investigations, and other legal actions shall be referred to the Executive Director, if applicable, the PIHP Chief Executive Officer or by the Compliance Officer, who will assess the situation and proceed in a lawful manner.
 - a. By policy, Pivotal and its providers, will comply, communicate, and cooperate with appropriate organizations or individuals possessing legal authority for access to records, files or reports pursuant to compliance.
 - b. If the subpoena calls for confidential records, then the statutes, rules and regulations that apply to the records being sought will be examined. Every effort will be made to ensure appropriate consent to disclosure is obtained and to safeguard all protected health care information.
3. The receiving PIHP Compliance Specialist handling the investigation shall contact both the complainant and alleged person/agency as part of the investigation.

4. The Local Compliance Officer shall commence a preliminary investigation and respond to reported instances within five (5) business days of receipt. Through the duration of the investigation updates will be provided to the appropriate parties at least every thirty (30) days until the investigation's conclusion. The Local Compliance Officer/Liaison will notify the PIHP Compliance Office for tracking purposes and Complainant as appropriate.
 5. The Local Compliance Officer shall complete the Complaint Investigation Form (Exhibit C) denoting investigation procedures, findings and recommendations.
- D. *Methods of Contact*
1. Telephone
Any person may call the Compliance Officer or the PIHP Compliance Officer, to report alleged issues of fraud, waste and/or abuse. This process allows for the anonymity of the caller, if so desired.
 - a. To promote ease of reporting a complaint, PIHP has a network-wide Compliance Hotline 1-800-783-0914.
 2. Mail/Email
Pivotal shall create a Compliance **Violation Reporting Form** for its provider network (Exhibit B) and shall make the form available to all provider sites, and shall post the Complaint form on the web site (www.stjoecmh.org). The reporting form will be available for use at all times for individuals to disclose wrongdoings.
 - a. The person completing the form may submit it into the Compliance Officer (or PIHP Compliance Officer) via e-mail or post-office mail, as they so desire. Please note e-mail submission is not anonymous when sent using your business (internal) e-mail address.
 - b. Persons submitting the complaint are encouraged to disclose their identity, but they may remain anonymous should they so desire. If responding anonymously, the complainant should establish a four (4) digit identification code to identify himself/herself on the form.
 - c. Regardless of method of contact, investigator will contact the Complainant if any additional information is needed. For anonymous submissions, investigator will ask anonymous caller to contact the Compliance Office within 7 days to ensure no additional information is needed. Both the caller and Compliance Officer shall recognize the caller by the Complainant, assigned four digit code.
 3. Alternative Reporting Process
If the Compliance Officer is the subject of possible unethical or improper conduct, the complainant is to file the report with the PIHP Compliance Officer or CEO.
- E. *Compliance Complaint / Investigation Reports*
1. The Compliance Officer will ensure all records related to an investigation are maintained/archived as required.
 2. The Compliance Officer shall maintain a record of all complaints received. Ultimately, the original records will be maintained by the originating office with a copy of the final/closed investigation to be sent to the PIHP Compliance Officer within 14 days of completion. Records pertaining to the Compliance Process shall consist of the following:

- a. **Compliance Violation Reporting Form** (as received from the Complainant); or as completed by Compliance Officer, for phone reports (Exhibit B).
 - b. **Complaint Investigation Form**, as completed by the assigned Compliance Officer (Exhibit C).
- F. *Non-Retaliation*
- All persons affiliated with provider network shall be protected under the federal Whistleblowers Act. No Provider Organization shall take corrective action against any employee for merely reporting what the employee reasonably believes to be a violation of this Compliance Program.
1. However, the Organization may take disciplinary action against an employee who knowingly fabricates, distorts, exaggerates, or minimizes a report of wrongdoing to either injure someone else or to protect him/herself or others; and/or.
 2. An employee whose report contains admissions of personal wrongdoing will not be guaranteed protection from corrective action, including disciplinary action pursuant to the organization's disciplinary procedures.
 3. The Organization is encouraged to give positive weight to self-confession in determining corrective action, but the extent depends on whether the employee's conduct was previously known to the organization, whether discovery of the wrongdoing was imminent, and whether the confession was complete and truthful.
- G. *Enforcement*
1. The Executive Director of the involved organization shall handle all corrective actions, including discipline of employees, with input from the Compliance Officer.
 - a. For subcontract Provider Organizations, the Executive Director of that organization shall handle all corrective action, including employee discipline, in accordance with the Organization's disciplinary procedures, with input from the designated Compliance Officer and/or Executive Director.
 - b. In administering employee discipline, the Executive Director may consider the following circumstances:
 - i. The employee promptly reported his/her own violation.
 - ii. The employee's own report constituted the Compliance Officer's first notice of the violation and the employee's involvement.
 - iii. The employee cooperated fully in the investigation and correction of the violation.
 2. Violations of this Policy may have severe consequences, including, but not limited to, Provider Organization Sanctions, Termination of the Provider Contract, Employment Termination, Civil and Criminal penalties as allowed under applicable federal and state laws, including the federal/state False Claims Act (FCA).

REFERENCE

Pivotal policy - 10.01 (Corporate Compliance Program)

SWMBH Policy

- 10.6 (Compliance Reporting Responsibilities)
- 10.8 (Compliance Reviews and Investigations for Reporting)

EXHIBITS

- A. Compliance Posting
- B. Compliance Violation Reporting
- C. Complaint Investigation