**SALISH BHO**

**HIPAA, 42 CFR PART 2, AND MEDICAID COMPLIANCE STANDARDS POLICIES AND PROCEDURES**

**Policy Name:** FRAUD AND ABUSE COMPLIANCE REPORTING STANDARDS **Policy Number:** 5.17

**Reference:** 42 CFR 438.608; 42 CFR 438.610, 42 CFR 455

**Effective Date:** 1/2005

**Revision Date(s):** 2/2013; 5/2016; 5/2018

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**Approved by:** SBHO Executive Board

## CROSS REFERENCES

- Plan: Compliance Plan
- Policy: Corrective Action Plan
- Policy: Protections Against Retaliation
- Policy: Third Party Liability and Coordination of Benefits
- Table: SBHO Compliance Plan Checklist

## PURPOSE

The SBHO Compliance Plan states the fundamental policy of Salish Behavioral Health Organization (SBHO) that all of SBHO business shall be conducted in compliance with state and federal requirements, all applicable laws and regulations of the United States (including False Claims Act) and the State of Washington, applicable local laws and ordinances and the ethical standards/practices of the industry.

To outline and define the scope, responsibilities, and activities to prevent, detect, and report incidents of Medicaid fraud and abuse. To outline a culture within, and activities conducted by, SBHO to identify and report instances of fraud and abuse including prevention, detection, and reporting of occurrences of fraud and abuse.

## DEFINITIONS

Behavioral Health Services: Mental health and/or substance use disorder treatment services provided by a Behavioral Health Agency (BHA) licensed by the State of Washington to provide these services.

(Medicaid) Abuse: Provider practices that are inconsistent with sound fiscal, business, or medical practices, and result in an unnecessary cost to the Medicaid program, or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care.

(Medicaid) Fraud: An intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable federal or state law.

Medicaid Fraud and Abuse can include but not be limited to:

- Enrolling deceased persons
- Failure to identify, pursue and document Third Party resources
- Intentional billing for services not performed or improper billing
- Duplicate billing
- Unnecessary or misrepresented services
- Billing Medicaid individuals for SBHO covered services
- Billing for services provided to non-Medicaid individuals
- Upcoding
- Unbundling
- Kickbacks
- Evidence of intentional false or altered documents
- Unlicensed or excluded professional or facility at time of service
- Falsification of health care provider credentials or no credentials
- Falsification of agency financial solvency
- Agency management knowledge of fraudulent activity
- Incentives that limit services or referral
- Evidence of irregularities following sanctions for same problem
- Embezzlement and theft

Persons associated with SBHO: Means all board and committee members, consultants, SBHO employees, and agencies receiving SBHO funding directly or indirectly to support behavioral health services.

Provider: Means any individual or entity providing SBHO funded behavioral health services through contractual agreement with SBHO. The term does not include employees of SBHO.

## PROCEDURE

### SBHO Administration

1. SBHO does not enter into contracts or other arrangements with providers which, directly or indirectly, pay or offer to pay anything of value, be it money, gifts, space, equipment or services, in return for the referral of individuals to SBHO for services paid by the Medicaid program or by any other federal health care program.

2. SBHO does not enter into financial arrangements with providers that base compensation on the volume of Medicaid services provided.

3. SBHO does not approve, cause claims, nor allow encounter data to be transmitted or submitted to the Medicaid program or any other federal health care program:
   a. For services provided as a result of payments made in violation of (1.) above.
   b. For services that are not reasonable and necessary.
   c. For services which cannot be supported by the documentation in the clinical and/or medical record.
   d. SBHO does not falsify or misrepresent facts concerning the delivery of services or payment of claims in connection with the Medicaid program or any other federal health care benefit program.
   e. SBHO does not provide incentives to providers to reduce or limit medical necessary behavioral health services to Medicaid beneficiaries or recipients of other federal health care programs.
   f. SBHO conducts all business with providers at arm's length and pursuant to written contract, with frequent and various monitoring mechanisms.
   g. No SBHO employee or person associated with SBHO prevents or delays the communication of information or records related to violation of the SBHO Compliance Plan to the SBHO Corporate Compliance Officer.
   h. The SBHO shall not employ or contract with providers excluded from participation in federal health care programs. The SBHO screens monthly the federal OIG website for local provider agencies who are excluded. The SBHO requires network agencies to attest to monthly screening of all staff, board members, volunteers/interns, and subcontractors for excluded providers.
   i. All SBHO employees and all provider agencies are screened upon hire to determine whether they have been (1) convicted of a criminal offense related to health care; or (2) listed by a federal agency as debarred, excluded or otherwise ineligible for federal program participation, as required by current federal and state laws; (3) listed as 5% or greater ownership of an agency.

      The exclusion is verified through the United States Health and Human Services website at http://exclusions.oig.hhs.gov .Employees or subcontractors found to have a conviction or sanction or found to be under investigation for any criminal offense related to health care are to be removed from direct responsibility for, or involvement with, SBHO funded services.

j. Agencies or individuals listed by a federal agency as debarred, excluded or otherwise ineligible for federal program participation, as required by current federal and state laws, or found to have a conviction or sanction related to health care will be excluded from providing SBHO funded services.

k. The SBHO requires network contractors to sign assurances that they are not excluded from participation and do not employ individuals who are excluded.

**SBHO Corporate Compliance Officer and Committee**

1. SBHO has designated the Compliance Officer as the SBHO Corporate Compliance Officer who will be responsible for overseeing the SBHO Compliance Plan and coordinating monitoring activities.
    - The Compliance Officer role is designated to upper management staff position.
    - The SBHO Corporate Compliance Officer is also referred to as the Compliance Officer ("CO") under the Medicaid program.
2. The SBHO Compliance Officer reports to the SBHO Compliance Committee. The SBHO Compliance Committee meets quarterly. They abide by the Compliance Charter established Committee. The SBHO Compliance Officer reports annually to the SBHO Advisory and/or Executive Board.
    - While the Compliance Officer generally reports to the CCC, the Compliance Officer always has the right to directly meet with the SBHO Advisory Board if the circumstances warrant (e.g., in case of CCC inaction).
3. The Compliance Plan is reviewed at least annually by the SBHO Compliance Officer. In consultation with the Compliance Committee, the Compliance Officer may revise the SBHO Compliance Plan, as appropriate.
4. The SBHO Compliance Officer duties include the following:
    - To oversee and monitor the SBHO overall compliance activities, including facilitating the SBHO Compliance Committee, whose agenda reviews fraud and abuse agenda items.
    - Continue to develop with the SBHO Compliance Committee, Compliance and Compliance Training Plans and monitoring activities that have SBHO wide application to the provider entities.
    - To report on a periodic basis to the SBHO Governing Boards (Executive and Advisory Boards) on the progress of implementation of the SBHO Compliance Plan. (verify)
    - To assist the Governing Board and staff in establishing methods to reduce SBHO vulnerability to Medicaid fraud and abuse.
    - To periodically review the SBHO Compliance Plan and recommend revisions as necessary.
    - To track and coordinate internal auditing and monitoring activities within SBHO according to the SBHO Compliance Plan Checklist, reviewing established procedures for periodic audits of the operations of providers.

- To receive and investigate, with assistance from SBHO legal counsel, reports of possible violations of the SBHO Compliance Plan.
- To receive and investigate reports in a timely responsive manner to possible violations of the Plan.
- To develop remediation action plans for the SBHO and the network providers to correct violations and prevent future incidents of noncompliance.
- To develop policies and programs that encourage employees and contractors to report suspected violations of the SBHO Compliance Plan without fear of retaliation.
- To identify areas where corrective actions are needed and, in consultation with the Governing Board and SBHO legal counsel, develop strategies to improve compliance. May consult with EQRO certified Compliance Officer(s), DBHR or the local Medicaid Fraud Control Unit (MFCU).
- As a part of the ongoing monitoring and auditing of the SBHO Compliance Plan, the Compliance Officer and SBHO legal counsel, utilizes the SBHO Compliance Committee to notify the network of changes in laws, regulations or policies, as necessary, to assure continued compliance.
- Conduct monthly federal exclusion website screening for SBHO employees, Board members, volunteers/ interns, and subcontractor agencies.

  Monthly screenings are also conducted for Kitsap Dispute Resolution Center (Ombuds program), Board members, and volunteers/ interns.

  Network agencies are required to attest in writing to monthly screening conducted by the 8th of the preceding month. These letters of attestation are tracked.

**SBHO Medicaid Fraud and Abuse Monitoring**

1. The SBHO detects and prevents Medicaid fraud and abuse through the following activities, as outlined in the SBHO Compliance Activity checklist:
   - Annual Fiscal Review.
     a. The SBHO verifies the third party pursued. The SBHO inquires and verifies the agency process for pursuing other billing sources.
     b. Data integrity and encounter data verification with the clinical documentation in a clinical chart, to include all the services provided in one month increments for at least 411 Medicaid encounters (per year).
   - SBHO Annual Administrative Reviews with each network provider agency
     a. The SBHO tool has a designated Compliance section that reviews various Compliance activities conducted by a network agency.
     b. As part of the SBHO Administrative Review, SBHO staff verify the newly hired network provider agency staff have been screened through the Federal Exclusion websites, as evidenced in at least 10% of personnel

files of new hires. The SBHO verify the screening through a website verification printout located in the personnel file.

- Internal monitoring and auditing for Medicaid fraud and abuse includes reviewed SBHO financial statements by State Auditor's Office, network provider annual independent audits, multiple feedback loops through various SBHO committees and individual sources to receive timely and confidential information. The SBHO staff periodically review SBHO/Kitsap County Personnel Policies related to required conduct and disciplinary action.

  Examples of specific internal monitoring activities include, but are not limited to:

  a. Review of Provider Quarterly Financial and Performance Reports
  b. Contracted agecies' annual independent financial audits
  c. SBHO Profiling of Provider Client Data
  d. Monthly review of Community Inpatient Claims
  e. Ombuds participation and reporting at QRT, QUIC, and other in-network committees
  f. SBHO Grievance and Fair Hearing Quarterly Tracking Report
  g. SBHO Utilization Management Monthly Tracking Reports
  h. SBHO review of the State Network Provider Licensing Reports
  i. Availability of SBHO Corporate Compliance Officer to discuss suspected fraud and abuse and help staff accurately assess the likelihood that fraud and/or abuse has occurred.
  j. When fraud and/or abuse is detected the SBHO Compliance Officer immediately reports the abuse to the appropriate authorities and conducts an investigation of the incident and reports the results of the investigation to the SBHO Corporate Compliance Committee and others as is appropriate.

## Network Contractors and Subcontractors Responsibilities

1. Providers are required to develop internal compliance programs, to include an agency Compliance Plan which compliments the SBHO Compliance Plan. Each network agency is required to have a designated agency-level Compliance Officer. The agency designated Compliance Officer is expected to fully participate in the SBHO quarterly Compliance Committee meetings.
2. Providers implement procedures to screen employees and subcontractors to determine whether they have been (1) convicted of a criminal offense related to health care; or (2) listed by a federal agency as debarred, excluded or otherwise ineligible for federal program participation as verified through the United States Health and Human Services website at http://www.oig.hhs.gov/fraud/exclusions/exclusions_list.asp or http://go.usa.gov/CPn

Employees or subcontractors found to have a conviction or sanction or found to be under investigation for any criminal offenses related to health care are to be removed from direct responsibility for, or involvement with SBHO funded services.

3. Providers are required to report all suspected incidents of Medicaid abuse and fraudulent and abusive activities to the SBHO Compliance Officer. See Developing Effective Lines of Communication Section, listed below.
    - It is recognized that individuals can report directly to MFCU concerns about possible allegations.
4. Contractors are made aware of their obligation to report to SBHO their good faith belief of any possible instances of non-compliance through terms identified in the SBHO Statement of Work.
5. Network contractors certify, and monthly attest, that they do not contract with or employ any individuals who have been identified as federally excluded, debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded individuals by any federal department or agency.
6. The reporting requirements are referenced in SBHO network provider contracts.
7. The SBHO Compliance Plan is posted on the SBHO website (SBHO Manual- chapter 5).

**SBHO Provided Education and Training**

1. The Plan and reporting requirements are referenced in SBHO contracts. Contractors are made aware of their obligation to report to SBHO their good faith belief of any possible instances of non-compliance.
2. SBHO trainings provide information and encourage employees and contractors to report suspected violations of the SBHO Compliance Plan without fear of retaliation.
3. The SBHO will notify subcontractors of applicable fraud and abuse training opportunities offered through Centers for Medicare and Medicaid, Medicaid Fraud Control Unit (MFCU), DBHR, EQRO or other Compliance related trainings.
4. All SBHO employees and network provider agencies receive a copy of the SBHO Fraud and Abuse Compliance Plan, related policies and activity checklist. These documents are available on the SBHO website for immediate review.

   These documents are reviewed at least annually by the SBHO Compliance Committee.
5. The SBHO Corporate Compliance Officer provides training to the SBHO staff, governing boards, and Quality Review Team, and network providers. The SBHO training curriculum addresses the following:
    a. The SBHO's commitment to compliance with all laws, regulations and guidelines of federal and state programs.
    b. The elements of the SBHO Compliance Plan, related SBHO policies, and SBHO activity checklist.
    c. An overview of what constitutes fraud and abuse in a Medicaid managed care environment.

d. A review of the specific state contract requirements applicable to SBHO business.

e. Responsibilities to report violations.

f. Various options of where and how to report violations.

g. The consequences of failing to comply with applicable laws.

6. The SBHO Compliance Officer is available to co-facilitate network agency trainings with the agency designated Compliance Officers. These trainings cover the above curriculum, as well as the network agency Compliance Plan and related policies and procedures. Network agencies are responsible for documenting the training dates and employees that attended.

## Developing Effective Lines of Communication

1. An open line of communication between the SBHO Compliance Officer and employees or others associated with the SBHO is critical to the successful implementation and operation of the plan.
2. All employees and persons associated with the SBHO have a duty to report all incidents of Medicaid abuse and fraudulent activities, suspected or otherwise, to the SBHO Corporate Compliance Officer.

   It is recognized that individuals can report directly to Medicaid Fraud Control Unit (MFCU) concerns about possible allegations.

   - The SBHO trainings provide information to encourage employees and contractors to report suspected violations of the SBHO Compliance Plan without fear of retaliation.

3. As outlined in the SBHO training curriculum and widely distributed information material, an individual may use any of the following mechanisms to report incidents of suspected violation(s):

   a. In person, to the SBHO Corporate Compliance Officer

   b. Calling the SBHO Corporate Compliance Officer directly at (360) 337-4886 or (800) 525-5637

   c. By faxing the SBHO Compliance Officer at (360) 337-5721

   d. By e-mailing the SBHO Compliance Officer at mcrownov@co.kitsap.wa.us

   e. By calling, on an anonymous basis, the SBHO Corporate Compliance Office at (360) 337-4648 or (800) 525-5637

   f. By mailing a written concern to the SBHO Corporate Compliance Officer:

      Corporate Compliance Officer
      Salish Behavioral Health Organization
      614 Division St. MS-23
      Port Orchard, WA 98366

   g. Contacting the Washington State Medicaid Fraud Control Unit (MFCU)

Medicaid Fraud Control Unit of Washington
Office of the Attorney General
P.O. Box 40116
Olympia, WA 98504-0116

Phone: (360) 586-8888

Fax: (360) 586-8877

On-line submission: http://www.atg.wa.gov/MedicaidFraud/default.aspx

OIG Hotline: 1-800-HHS-TIPS (1-800-447-8477)

- In addition, any person may seek guidance with respect to the SBHO Compliance Plan or the procedures contained in this policy at any time by following the same reporting mechanisms outlined above.

## POLICY MONITORING

This Policy is a mandated by contract and statute.

1. This Policy will be monitored through use of SBHO:
    - SBHO Compliance Committee review, at least annually
    - Annual SBHO Provider and Subcontractor Administrative Review
    - Annual Encounter Validation Study
    - Monthly Excluded Provider Attestation Tracking
    - Annual SBHO Provider Fiscal Review
    - Annual Provider Chart Reviews
    - Grievance Tracking Reports
    - Biennial Provider Quality Review Team On-site Review
    - Semi-annual Provider Revenue and Expense Report
    - Quality Management Plan activities, such as review targeted issues for trends and recommendations
    - Review of previous Provider Corrective Action Plans related to policy, including provider profiles related to performance on targeted indicators
2. If a provider performs below expected standards during any of the reviews listed above a Corrective Action will be required for SBHO approval. Reference SBHO Corrective Action Plan Policy.
3. Additional disciplinary actions and sanctions, per the SBHO Compliance Plan and SBHO contract, may also be enforced for failure to comply with this policy.