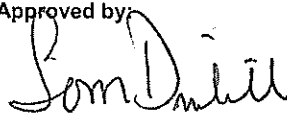


 HAWAII HEALTH SYSTEMS C O R P O R A T I O N <i>"Touching Lives Everyday"</i> Policies and Procedures	Quality Through Compliance	Policy No.: ADM 0008
		Revision No.: N/A
Subject: Corporate Policy on Responding to Governmental Agencies	Issued by: Corporate Compliance Committee Approved by:  Thomas M. Driskill, Jr. President & CEO	Effective Date: September 20, 2000
		Supersedes Policy: N/A Page: 1 of 6

I. **PURPOSE:** To set forth HHSC's policy of cooperating with agents from governmental agencies, while protecting the rights of HHSC and its employees; to establish guidelines for HHSC employees to follow in responding to contact from governmental agencies; to establish protocols when communicating information to governmental agencies on behalf of HHSC; and to establish protocols when receiving information from governmental agencies.

II. **POLICY STATEMENT:** HHSC strives to comply with all of the complex rules and regulations governing the health care industry. However, the laws and regulations are numerous, and in many instances are vague or subject to different interpretations. This is a concern to HHSC because the Department of Justice's investigation of health care fraud continues to escalate each year. As a result, government investigators are contacting employees of health care entities regarding potential violations. A few methods which governmental agencies use to contact employees include undercover investigations, search warrants, subpoenas for documents and testimony, as well as interviews. HHSC employees must be knowledgeable in responding appropriately to such governmental contacts in a manner that is cooperative yet protects the rights of HHSC and its employees.

HHSC also recognizes that in certain instances it may be appropriate for HHSC employees to communicate certain information to the government on behalf of HHSC, which is outside of the ordinary course of business. In order to prevent the dissemination of incomplete or inaccurate information, HHSC recognizes the need for a consistent approach in communicating such information. HHSC has adopted this policy to effectuate these purposes.

III. PROCEDURE:

A. Contacts by Governmental Agents:

1. Facility Response Team: All HHSC facilities should designate a response team comprised of employees from various shifts that could be available to respond in the event of an unexpected contact by a governmental agency. These individuals would be responsible for dealing with the governmental agents until contact is made with the HHSC General Counsel or her designee and to work with the General Counsel or her designee in responding to the government's request.

The response team members should be specifically trained on:

- Appropriate responses to governmental agency investigations, including awareness of the guidelines set forth in this policy;
- Assessment of a search warrant to determine if it is valid; and
- Appropriate resource personnel, such as various ways to reach the HHSC General Counsel, etc.

Education and training for the response team should be conducted on a routine basis.

2. General Guidelines for Employees if Approached by Governmental Agents:

a. Initial Response:

- If you are approached by an individual representing himself/herself as a governmental agent for information regarding HHSC or any HHSC-affiliated health care entity, or any other entity with which HHSC does business, you should:
- Be courteous.
- Seek identification and determine what governmental agency the agent is from. If the individual has no official identification, call the governmental agency to verify credentials. If there are several agents, determine which agent is in charge.
- Determine what specifically the governmental agent desires (for example, is the agent interested in conducting a search, interview or audit).
- Notify the HHSC General Counsel and your Administrator/CEO/Regional Compliance Officer immediately. If you are unable to reach these individuals immediately, notify a member of the Facility Response Team if you are at the facility. Attachment 1 contains the list of names and phone numbers of the Response Team for each facility.

b. Interviews:

- If the governmental agent desires to interview you, try to determine the topic for discussion. You are not obligated to speak to the agent at that moment. You can ask to schedule an appointment for a later time. However, you are free to speak with the agent if you so desire. If you schedule an appointment for a later time, please notify the HHSC General Counsel immediately.
- If you speak with the governmental agent (whether then or later):
 - ✓ Know that you are entitled to take someone with you, including a lawyer of your own choosing.
 - ✓ Know that you are able to take notes.

- ✓ Be honest.
- ✓ Listen carefully to the agent's questions and try to respond without speculating.

- After any interview with a governmental agent, please contact the HHSC General Counsel as soon as possible.

c. Searches:

- If the governmental agent desires to search an HHSC facility or just look around for a few documents – it constitutes a search.
- Ask to see if there is a search warrant; if so, request a copy, as well as any accompanying affidavits. A search warrant is a court order directing law enforcement agents to enter a specified property, search that property and seize items which are described on the documents.
- Immediately notify the HHSC General Counsel and the Administrator/CEO if not already done so.

✓ **IF THERE IS A SEARCH WARRANT:**

- Make a copy of the search warrant and any accompanying documents.
- Fax any information received to the HHSC General Counsel or designee and call the legal office to alert them of the incoming fax.
- Tell the agent that you would like to have the HHSC General Counsel determine the validity of the search warrant. Request that the governmental agent delay executing the search until after he has spoken directly with the HHSC General Counsel or her designee. Although they do not need to comply, in some instances they may cooperate.
- If counsel is not available, try to determine if the search warrant is valid and the contents of the warrant. A warrant must describe the areas that may be searched, as well as any items which may be taken. Try to determine what specifically can be searched. See if this is consistent with what the governmental agent stated or is doing. Also look at the time and date. See if the search is within the specified period of time. **If the warrant is valid – governmental agents do not need permission to conduct a search and seizure. Do not interfere with such a search – interference may constitute an obstruction of justice.**
- Search warrants may include computerized hardware, software, and files.

- A search warrant does not give the agents the authority to interview employees.
- The General Counsel and the Administrator may decide to send home nonessential personnel in the area of the search.

✓ **IF THERE IS NO SEARCH WARRANT:**

- If there is no search warrant and the agent is seeking documents, ask the agent to discuss the proposed search with the HHSC General Counsel. If the agent refuses, ask for his/her supervisor's name and phone number. Provide this information to the HHSC General Counsel.
- If there is no search warrant and the agent is seeking a person, do not obstruct any agent who is in direct pursuit of any individual who may be a suspect on hospital property. (For example, they may be looking for an individual who runs through hospital property after stealing a purse.) However, if the individual sought is a patient, ask the agent to talk to the HHSC General Counsel.
- Some governmental agencies can assess penalties if you do not provide them immediate access. So, if in doubt, offer to cooperate and try to reach the HHSC General Counsel as soon as possible.

✓ **ONCE ANY SEARCH IS UNDERWAY:**

- Try to keep employees and staff calm. Employees should pick up their personal belongings, if possible, and move away from the area(s) being searched.
- Closely monitor any search to determine what is examined, and make a list of any items taken and areas searched. Take notes of all actions of the agents.
- If there are any documents that seem to be outside the scope of the search warrant, do not prevent the agent from examining them or taking them, but tell the agent that you believe they may not be within the scope of the search warrant and make a notation.
- If there are any attorney-client privileged documents (e.g. letters from legal counsel), tell the agent you believe the documents are privileged documents and make a notation if the agent reviews or takes any such documents.
- If the agent is interested in reviewing or copying medical records, inform the agent that the records may be subject to confidentiality protections under law and make a notation.
- If the agent wants to take any documents or computer files, offer to make copies of all requested documents. This way you can

determine precisely what is taken. Additionally, certain information may be essential to the operations of the HHSC facility or needed for patient care. If the agent refuses to allow you to make copies, do not interfere but make a notation.

- Ask the agent for a list all documents and items taken from the facility. The agent is required to give a receipt for all items seized. This inventory should be in addition to your own notes.
- Do not make statements indicating that you consent to the search.

✓ **AFTER THE SEARCH:**

- Discuss the search process and document/items taken with the HHSC General Counsel or designee.
 - As authorized by the HHSC General Counsel, interview employees where property was seized.
 - If you receive any calls from newspapers or other media sources, please refer the calls to the HHSC General Counsel or Administrator/CEO.
- d. Request for Documents or Subpoena for Testimony: If you receive a request in the mail from a governmental agency for documents or a subpoena for your testimony as a witness, contact the HHSC General Counsel for instruction.
- e. Audits: If governmental agencies are conducting any audits at an HHSC facility, it is essential that the facility administrator be notified of the type and scope of the audit. This includes routine billing audits. The facility administrator should notify the Regional and Corporate Compliance Officer of the audits. If during the course of any governmental audit, the agent informs you of any other problems or inquires about other policies and practices, notify the facility administrator and the Regional Compliance Officer.

3. Other General Guidelines for Staff if an Investigation is Underway:

- Do not destroy or alter any documents sought in an investigation.
- Do not provide any false information.
- Do not create any new documents before speaking with the HHSC General Counsel.
- Make sure that all communication, written and oral, regarding the matter being investigated, is prepared at the direction of the HHSC General Counsel or her designee, and if in writing, labeled as an attorney-client privileged document.
- If you observe any employees engaging in any questionable conduct or attempting to interfere with the investigation in any way, call the HHSC General Counsel immediately.

B. Communications with Government Agencies Initiated by HHSC Employees on Behalf of HHSC:

1. Reporting of Information: HHSC desires to ensure that certain communications with State or federal governmental agencies on behalf of HHSC, which are outside the normal course of daily business, are done in a consistent manner which discourages individuals from communicating inaccurate or incomplete information. Accordingly, HHSC now requires the following:
 - Any communications with State or federal governmental agencies made on behalf of HHSC, which are outside the normal day to day communications with agencies, must be approved by the HHSC Administrator/CEO with input from the HHSC General Counsel.
 - Settlement of claims, payment of any fines, and payment of any monies determined to be owing to the government over the amount of \$100,000 must be done with the advance knowledge of the HHSC General Counsel.
 - * If there is any uncertainty regarding what information can be communicated without HHSC approval, HHSC employees should notify the HHSC Administrator/CEO.

C. Documenting Advice from Governmental Agencies: Any material information received from a governmental agency should be put in writing, and maintained in a manner that makes it easily retrievable. A copy of the memo should also be sent to other employees who need the information in order to properly perform job duties, including management.

- For example, a copy of any memo pertaining to billing, coding or reimbursement rules should be sent to the Regional Compliance Officer (RCO) and the Administrator and departments which impact those areas. The Administrator or RCO may determine that other facilities may benefit from the communication resulting in further publication.
- In documenting conversations with governmental agents, include the name of the individual who provided the information, the department, the time and date and a summary of what information was provided.
- If the advice is controversial, the advice should be verified.

INVESTIGATIONAL RESPONSE TEAM MEMBERS
