

FOOTHILLS GATEWAY, INC.

Federal False Claims Act Prevention and Detection of Fraud and Abuse

POLICY:

It is the policy of Foothills Gateway, Inc. (FGI) to detect and eliminate waste, fraud or abuse related to payments to the organization from federal or state programs for individual receiving services care and other services. Foothills Gateway, Inc. (FGI) does not tolerate making or submitting false or misleading billing claims or statements to any government agency, health care program or payer source.

The organization is committed to providing education to employees and to its contractors and/or agents on the expected standards of conduct. An essential element of the standards of conduct includes an obligation on the part of all employees, agents, contractors and other associates to report any issues and concerns that could lead to false claims or fraud, abuse and waste.

PROCEDURE:

This procedure provides information on the role of Federal and State laws and rules in preventing fraud, abuse and waste and the organization's internal processes for the prevention and detection of fraud and abuse. This information is provided with the intent to effect compliance of Foothills Gateway, Inc. (FGI) with the requirements under Section 6032 of the Deficit Reduction Act of 2005.

The following topics are included:

- A summary of the Federal False Claims Act and a summary of protections for employees who report suspected violations of these laws;
- A summary of administrative remedies found in the Program Fraud Civil Remedies Act;
- A summary of the rules of the State of Colorado that pertain to false claims or statements; and
- A reference guide for employees to access the organization's existing resources, including policies and procedures for reporting issues and potential compliance concerns confidentially and without fear of retaliation.

I. Federal False Claims Act, 31 USC Sections 3729 - 3733

The Federal False Claims Act (FCA) was first enacted during the Civil War to fight fraud in supplying goods to the Union Army. The law now applies to any federally funded contract or program, except tax fraud, and establishes liability for any person who knowingly causes to be presented a false or fraudulent claim for payment. The FCA was expanded to include Medicare and Medicaid programs in 1986.

Summary of Provisions The FCA imposes a civil liability on any person who, with respect to Medicare, Medicaid or other federally funded health care programs:

- knowingly files a false or fraudulent claim for repayment or approval;
- knowingly makes or uses a false record or statement to obtain payment on a false or fraudulent claim;
- knowingly makes or uses a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money to the government; or
- conspires to defraud such a program.

“Knowing” and “knowingly” mean that a person, with respect to the information has:

- actual knowledge that the information on the claim is false;
- acts in deliberate ignorance of whether the claim is true or false; or
- acts in reckless disregard of whether the claim is true or false – no proof of specific intent to defraud is required.

Penalties The FCA is not a criminal statute and thus imposes civil penalties. A person or entity found liable under the FCA is subject to a civil money penalty of between \$5,500 and \$11,000 plus three times the amount of damages sustained by the government for each false claim. If a provider or supplier is convicted of a FCA violation, the Office of the Inspector General may seek to exclude the provider or supplier from participation in federal programs.

Qui Tam “Whistleblower” Provision Under 31 USC Section 3730, individuals who have knowledge of false claims may bring civil actions on behalf of the government for FCA violations pursuant to the Qui Tam provision. The individual (whistleblower) must file the lawsuit “under seal” on behalf of the government in a federal district court. If the government determines that the lawsuit has merit and decides to intervene, the U.S. Department of Justice will direct the prosecution of the lawsuit. If the government chooses not to pursue the lawsuit, the individual may continue with the lawsuit on his/her own. Depending on the outcome of the case and the whistleblower’s level of involvement in the action, the whistleblower may be entitled to between 15 and 30 percent (plus fees and costs) of the proceeds of an action or settlement. The award may be reduced, however, if the court finds that the whistleblower planned and initiated the violation.

Anti-Retaliation Protections Under the FCA, a whistleblower at any level of involvement, including assistance in investigating, reporting, or providing testimony is protected from retaliation by an employer and fellow employees. Under a provision of the FCA, any employee who is discharged, demoted, suspended, threatened, harassed or in any manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employee or other in furtherance of an action under this section shall be entitled to all relief necessary to make the employee whole. The FCA entitles whistleblowers additional relief arising from special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys’ fees.

II. Federal Program Fraud Civil Remedies Act 31 USC Sections 3801 - 3812

The Program Fraud Civil Remedies Act of 1986 (PFCRA) provides administrative remedies for making false claims and false statements. The Act deals with submission of improper “claims” or “written statements” to a federal agency. The PFCRA imposes liability for filing a claim that persons or entities know or has reason to know:

- is false, fictitious or fraudulent;
- includes or is supported by a false written statement;
- includes or is supported by a written statement omitting a material fact when the person or entity has a duty to include the statement; or
- is for payment for property or services not provided as claimed.

In addition, a person or entity violates the PFCRA if they submit a written statement which they know or should know:

- asserts a material fact that is false, fictitious or fraudulent; or
- omits a material fact that they had a duty to include which causes the statement to be false, fictitious or fraudulent and the statement contained a certification of accuracy.

Penalties A violation under the PFCRA may include a penalty of \$5,000 for each wrongfully filed claim or statement, plus an assessment of twice the amount of any unlawful claim that has been paid.

Examples The following are examples of conduct that, if done knowingly, could lead to potential liability under the FCA or PFCRA. The examples listed are not the only instances in which the FCA may be violated. Some of the examples were identified through settlements and corporate integrity agreements reached between providers and the U.S. Department of Justice and the Office of the Inspector General. Information on these and other settlements can be accessed at www.oig.hhs.gov or www.usdoj.gov.

- making false statements on a cost report;
- falsifying records such as treatment plans to maximize payments;
- unlawfully giving health care providers inducements in exchange for service or referrals;
- falsifying records;
- double-billing for items or services;
- submitting bills for items never provided and services never performed; or
- filing a claim for payment in which the services were not rendered exactly as claimed.

III. Colorado State Rules Vol. 8.076 – the Program Integrity (PI) rule

The PI rule combined PI-related functions from 8.051 – Standards for Denial, Termination, and Non-renewal or Provider Agreements and portions of 8.070 – Fraud and Abuse. Some of the rule provisions include:

Definitions – 8.076.1 This includes definitions applying to misuse which has been expanded to address improper billing practices. Abuse is detailed as:

- Billing for services and/or supplies without valid documentation to support the claims submitted;
- Unbundling charges for services that are required to be billed (bundled) ;
- Submitting a fee-for-service claim for goods or services before they have been provided; or
- Signing prior authorizations for services or supplies that are inappropriate or not medically necessary for the individual receiving services.

False representation means an inaccurate statement that is relevant to a claim for reimbursement and is made by a provider who has knowledge of the truth of the statement or is acting in deliberate ignorance of or with reckless disregard for the truth of the statement.

Recoveries and Penalties – 8.076.3 This references the overpayment, interest and penalty calculations stated in the Colorado Statutes Sec. 26-4-403 (2) C.R.S.

Withholding of Payment during Investigation for Fraud and/or Willful Misrepresentation – 8.076.4 The State may withhold payments to a provider if there is evidence of fraud or willful misrepresentation under the Medicaid program when in receipt of reliable evidence.

Exclusions, Suspensions, Denials and Termination of Providers – 8.076.5 The State may deny or terminate a provider for Good Cause, which is inclusive of the provider not complying with applicable federal and state statutes and regulations or having engaged in false representation and/or fraud in submitting claims to Medicaid.

The rules can be accessed at <http://www.sos.state.co.us/CCR/Welcome.do>.

IV. Compliance Program Information

FGI has a Whistleblower Protection Policy to protect employees and other individuals from retaliation for:

- Reporting in good faith perceived misconduct, including actual or potential violations of laws, regulations, policies, procedures, or the FGI Standards of Conduct; and/or
- Assisting or participating in an investigation or compliance review.

FGI will:

- Maintain an “open-door” policy at all levels of management to encourage employees and others to report problems and concerns;
- Protect against retaliation toward any employee or other individuals; and/or
- Subject any employee who commits or condones any form of retaliation to discipline and corrective action up to, and including, termination.

The following related policies and procedures can be found on the FGI intranet and on the FGI website:

- Whistleblower Protection Policy
- Conflict of Interest Policy
- Corporate Compliance Policy Statement

- Confidentiality
- HIPAA
- Problem Resolution

V. Compliance Violation Reporting Process

FGI takes compliance with the federal and state false claim laws and regulations seriously. Employees, agents, contractors and other associates who are aware of or suspect any violations or potential violation of such laws or any other potentially fraudulent conduct is expected to report the violation regardless of whether it is carried out willfully and knowingly or whether it is being done inadvertently or accidentally. Failure to report compliance violations may place the organization at risk for irreversible damage by preventing the immediate implementation of measures to resolve a violation or averting the escalation of a small issue into a major problem for the organization. Knowing of a potential violation and failing to report it may result in disciplinary action.

Employees, agents, contractors and other associates are expected to contact a supervisor, manager, director, or one of the Chief Officers. Concerns may be raised anonymously to the Chief Administrative Officer. Reports that provide adequate information to permit an investigation, even if submitted anonymously, will be pursued. The person reporting is encouraged to identify themselves so that appropriate investigation and follow-up can be conducted. The Chief Administrative Officer will review any report and may work in collaboration with other departments in the investigation of potential violations.

Any information that employees, agents, contractors and other associates provide concerning a violation will be kept in confidence to the extent feasible and legal. In the event of a government investigation or lawsuit, or if the need otherwise arises for FGI to disclose the information, such information may be disclosed at the direction of legal counsel. FGI will not take adverse action against an employee for reasonably reporting potential violations of law. By reporting his or her own misconduct, however, an employee will not insulate himself or herself from potential disciplinary action for such a violation. Employees should report concerns about possible retaliation or harassment to the Chief Administrative Officer as outlined in FGI's Whistleblower Protection Policy.

FGI will not tolerate abuse of the reporting process. Any employee who makes an intentionally false statement, or makes a report of alleged misconduct in bad faith, shall be subject to appropriate disciplinary action.

The Compliance Violation Reporting Form can be found on the FGI intranet in the General Agency Forms folder, on the FGI website or a request for a copy of the form can be made to the Chief Administrative Officer.

12/06; 4/08; 6/10; 6/11; 12/12; 2/14; 1/15; 2/16; 2/18