



# Colorado West HealthCare System

Grand Junction, CO

## CWHS-WIDE POLICY

<b>Policy Title:</b>	<b>FALSE CLAIMS ACT</b>	
<b>Effective Date:</b> 1/30/2008	<b>Responsible Departments:</b>	All Departments
<b>Supersedes Date:</b> N/A		
	<b>Administration Approval:</b>	Wesley D. White, Interim President & CEO
	Original signature on file	
<b>Next Review Date:</b>	<b>Dates Reviewed:</b>	<b>Date Discontinued:</b>

1.0 **PURPOSE:** To establish a written policy for all Colorado West HealthCare System (CWHS) that:

1.1 Provides information about the Federal False Claims Act, the Federal Administrative Remedies pertaining to false claims and statements, anti-fraud provisions of the Colorado Medical Assistance Act, and the civil penalties for false claims and statements.

1.2 Provides information about the legal protections under federal law available to personnel who report incidents of false claims to regulatory agencies.

1.3 Addresses CWHS policies and procedures for detecting fraud, waste and abuse.

2.0 **POLICY:**

2.1 CWHS will inform all officers, directors, employees, contractors, sub-contractors, agents, and other persons who, on behalf of CWHS, furnish or authorize the furnishing of Medicaid health care items or services, perform billing or coding functions, or are involved in the monitoring of health care provided by CWHS, about the Federal False Claims Act, Administrative Remedies pertaining to false claims and statements, the anti-fraud provisions of the Colorado Medical Assistance Act, and CWHS procedures for detecting fraud, waste, and abuse.

2.2 CWHS may revise the False Claims Act Policy. CWHS reserves the right to have the revised policy applicable to all persons who previously received a copy of the policy without the obligation to redistribute the revised policy. A current False Claims Act Policy will be posted on the CWHS website which can be accessed by all persons subject to the Policy.

**3.0 FEDERAL FALSE CLAIMS ACT:** There are two primary statutes available to the Department of Justice (DOJ) or the Office of Inspector General (OIG) in seeking civil damages or exclusion from federal healthcare programs for false or fraudulent claims: The False Claims Act and the Administrative Remedies for False Claims and Statements.

**3.1 *The False Claims Act (FCA), 31 U.S.C. §§ 3729-3731:*** The FCA creates civil liability to any person who:

3.1.1 Knowingly presents, or causes to be presented, to an officer or employee of the United States Government or member of the Armed Forces of the United States, a false or fraudulent claim for payment or approval;

3.1.2 Knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the government;

3.1.3 Conspires to defraud the government by getting a false or fraudulent claim allowed or paid;

3.1.4 Has possession, custody or control of property or money used, or to be used by the government and, intending to defraud the government or willfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;

3.1.5 Authorized to make or deliver a document certifying receipt of property used, or to be used, by the government and, intending to defraud the government, makes or delivers the receipt without completely knowing that the information on the receipt is true;

3.1.6 Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the government, or a member of the Armed Forces, who lawfully may not sell the property; or

3.1.7 Knowingly makes, uses, or causes 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 government.

**3.2 *Claim defined*** – A “claim” is: Any request or demand, whether under a contract or otherwise, for money or property which is made to a contractor, grantee, or other recipient, if the United States Government provides any portion of the money or property which is requested or demanded, or if the government will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

**3.3 *Knowing and Knowingly defined*** - To "knowingly" present a false or fraudulent claim means that the provider: (1) has actual knowledge that the information on the claim is false; (2) acts in deliberate ignorance of the truth or falsity of the

information on the claim; or (3) acts in reckless disregard of the truth or falsity of the information on the claim. It is important to note the provider does not have to deliberately intend to defraud the federal government in order to be found liable under this Act. The provider need only "knowingly" present a false or fraudulent claim in the manner described above.

3.4 *Penalty for Unlawful Conduct* - The civil penalty for violating the False Claims Act is a minimum of \$5,500 up to a maximum of \$11,000 for each false claim submitted. In addition to the penalty, a provider could be found liable for up to three times the amount unlawfully claimed except in situation where it is found that:

3.4.1 The person committing the violation furnished officials of the United States responsible for investigating false claims violations with all information known to such persons about the violation within 30 days after the date on which the defendant first obtained the information;

3.4.2 Such persons fully cooperated with any government investigation of such violation; and;

3.4.3 At the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation.

3.4.4 Where these conditions are met, the penalty would be not less than two (2) times the amount of damages which the government sustains because of the act of the person. A person shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damage.

3.5 *Exemption From Disclosure* – Any information furnished pursuant to “Penalty for Unlawful Conduct” above shall be exempt from disclosure under Section 552 of Title 5.

3.6 *Exclusion* – This section does not apply to claims, records, or statements made under the Internal Revenue Code of 1986. [Title 26 U.S.C.]

3.7 *Qui Tam (Whistleblower) Protection* – Under certain circumstances, private individuals are protected and can bring “qui tam” (whistleblower) suits in the name of the United States against health care providers, and the individual shares in any recovery against the provider.

3.7.1 The purpose of bringing the qui tam suit is to recover the funds paid by the government as a result of the false claims. The government may choose to intervene and proceed with the lawsuit itself. In some instances the person who initiated the lawsuit (the “relator”) will get a

portion of the money the government collects from the wrongdoer if the lawsuit is ultimately successful.

3.7.2 The FCA contains important protection for whistleblowers. It protects and employees who are “discharged, demoted, suspended, threatened, harassed or in any manner discriminated against by their employer because of lawful acts done in furtherance of the FCA. The Statute entitles any such employee to all relief necessary to make the employee whole.

3.7.3 Civil actions may not be filed more than six (6) years after the date on which the violation occurred or more that three (3) years after the date when material facts are known or should have been known by the US Government, and in no event more than ten (10) years after the date on which the violation occurred.

3.7.4 The US Attorney General has the authority to require individuals with information relevant to false claims to produce the evidence or answer questions about the evidence during the course of an investigation. This must be done in the manner set forth in section 3733 of the Act.

4.0 **FEDERAL ADMINISTRATIVE REMEDIES:** Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812. Pursuant to 31 U.S.C. § 3802 any person who presents a claim that the person knows or has reason to know: (A) is false, fictitious or fraudulent, (B) Includes or is supported by any written statement that asserts that a material fact that is false, fictitious or fraudulent, (C) includes or is supported by any written statement that (i) omits a material fact; (ii) is false, fictitious or fraudulent, and (iii) is a statement in which the person has a duty to include such a material fact, or (D) is for payment for the provision of property or services which the person has not provided as claimed, shall be subject to a civil penalty of not more than \$5,000 for each claim plus an assessment of up to twice the amount of each false or fraudulent claim.

5.0 **COLORADO MEDICAL ASSISTANCE ACT:** Colo. Rev. Stat. §§ 25.5-4-304 - 306. Colorado has not adopted a false claims act with whistleblower provisions. It has adopted an anti-fraud statute to prevent the submission of fraudulent claims to the Colorado Medicaid program. The statute makes it unlawful to: (1) make a false representation of material fact, (2) present a false claim for payment or approval, (3) present a false cost document in connection with a claim for payment or reimbursement from the Colorado Medicaid program, (4) make a claim with knowledge that the individual who furnished the services was not licensed to provide such services, or (5) subject to certain exceptions, offer, solicit, receive, or pay kickbacks, bribes, or rebates (a) in connection with referrals or recommendations in connection with furnishing items or services, the payment for which may be made through medical assistance programs, or (b) in return for purchasing, leasing, ordering, or arranging for the same of any good, facility, service, or item for which payment may be made through the medical assistance programs. Violations are punishable by substantial monetary penalties.

## 6.0 **CWHS POLICIES AND PROCEDURES FOR DETECTING FRAUD, WASTE, AND ABUSE:**

6.1 As part of the CWHS Corporate Compliance Plan, CWHS has enacted a policies containing detailed procedure for identifying and reporting potential fraud and abuse. Under these policies, CWHS personnel should report suspected fraud and abuse, including false or misleading claims or statements, to one of the following:

6.1.1 The appropriate department supervisor or director,

6.1.2 The Chief Compliance Officer,

6.1.3 The CWHS Compliance Hotline at 877-437-7448, or

6.1.4 CWHS Chief Executive Officer, or

6.1.5 CWHS Counsel.

6.2 *CWHS Non-Retaliation Policy*: CWHS has adopted a “Non-Retaliation” Policy that provides protection for those who make a good faith report of issues or concerns—including reports of suspected fraud, waste, and abuse.

## 7.0 **PROCEDURE:**

7.1 CWHS will:

7.1.1 Provide this Policy to officers, directors, employees, contractors, sub-contractors, agents, and other persons who, on behalf of CWHS, furnish or authorize the furnishing of Medicaid health care items or services, perform billing or coding functions, or are involved in the monitoring of health care provided by CWHS.

7.1.2 Revise this Policy as necessary to comply with changes in the law.

7.1.3 Include this Policy in the Supervisor’s Manual.

7.1.4 Post this Policy on the CWHS website. Posting the policy on the website makes the policy accessible to all persons subject to it.

## 8.0 **REFERENCES:**

8.1 31 U.S.C. §§3729-3733 (False Claims Act)

8.2 31 U.S.C. §§3801-3812 (Administrative Remedies for False Claims and Statements)

8.3 The Deficit Reduction Act of 2005 (§ 6032); or §§1902(a) of the Social Security Act 42 U.S.C. 1396a(a).

8.4 Colo. Rev. Stat. §§ 25.5-4-304 - 306

8.5 CWHS Code of Conduct Guide

8.6 Other CWHS Compliance Policies

**The policy and procedures set forth above neither constitute, nor should be construed to constitute, a contract between CWHS and its employees. Such policies and procedures do not constitute a guarantee of continued employment or a guarantee of employment for a definite term. Employment at CWHS is at-will, which means that the employment relationship can be terminated by the employee or CWHS at any time, with or without cause or notice.**

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