

Policy
CARING, Inc., CARINGHouse Projects, Inc. and their Affiliates

Title: Fraud, Waste and Abuse, including Medicaid Fraud and Whistleblower Protections for Reporting

Procedure: See Below.

Effective (revision) Date: 1-1-2009, 9-12-2017, 3-1-2020, 9-1-2020, 7-2021

This Policy Rescinds all prior related policies and is developed in compliance with the Federal Deficit Reduction Act of 2005, Section 6032 and the New Jersey Department of Human Services, Division of Developmental Disabilities (“DDD”) Circular # 54

Purpose: It is the purpose of this Policy to explain and establish procedures for all employees and contractors or agents of the CARING entities to understand the importance of and the mechanism for reporting non-compliance with laws and regulations and/or any indication of false claims, fraud, waste and abuse by any CARING entity, employee or contractor. It is also provided to inform all employees and contractors of the whistleblower protections relating to the good faith reporting of those alleged facts and circumstances. The Policy is also provided to comply with the Deficit Reduction Act of 2005 and DDD Circular #54.

Scope: This policy applies to CARING, Inc., CARINGHouse Projects, Inc. and all affiliated and related entities, their respective employees including management, and contractors and agents.

Policy: It is the policy of the CARING entities to be in compliance with all federal and state laws and regulations including, but not limited to, those related to the Deficit Reduction Act, the federal False Claims Act (31 USC 3729-3733), the federal Program Fraud Civil Remedies Act (31 USC 3801-3812), New Jersey’s Medical Assistance and Health Services Act (Criminal Penalties- NJSA 30:4D-17(a)-(d)), New Jersey’s Medical Assistance and Health Services Act (Civil Penalties- NJSA 30:4D-7h, NJSA 30:4D-17(e)-(i), & NJSA 30:4D-17.1a), New Jersey’s Health Care Claims Fraud Act (NJSA 2C:21-4.2 & 4.3, NJSA 2C:51-5), the New Jersey Conscientious Employee Protection Act (NJSA 34:19-1 et seq), and the New Jersey False Claims Act (N.J.S.A. 2C:32-1 et seq.) and to encourage employees and contractors to assist in monitoring such compliance. (see further descriptions of each law attached)

A. General Standards/Intent:

1. It is the intent of CARING to adhere to all laws and regulations that apply to the organization and the underlying purpose of this policy is to support the organization's goal of legal compliance. The support of all employees is necessary to achieving compliance with various laws and regulations.

2. An employee is protected from retaliation if the employee brings an allegation of unlawful activity, policy, or practice to the attention of CARING in the manner described herein and provides the CARING with a reasonable opportunity to investigate and correct the alleged unlawful activity. The protection described below is available to all employees that comply with this requirement

3. Section 6032 of the Federal Deficit Reduction Act of 2005 (Public Law 109-171) requires certain governmental, for-profit and non-profit providers and other entities that receive Medicaid funding to take actions that will address fraud, waste and abuse in health care programs that receive federal funds.

4. The Deficit Reduction Act and other laws provide the following requirements to which CARING is complying through the development and distribution of this Policy to its employees and relevant contractors:

a. Governmental, for-profit and non-profit providers and other entities that receive Medicaid funding are required to establish written policies for all employees and contractors or agents that provide detailed information about the federal and State laws on false claims; fraud, waste and abuse; and whistleblower protections, and separate administrative remedies for false claims or statements;

b. CARING include as part of its written policies, detailed provisions regarding procedures for detecting and preventing fraud, waste, and abuse, and;

c. CARING provide employees with a specific discussion of the rights of the employees to be protected as whistleblowers and the entity's policies and procedures for preventing and detecting fraud, waste, and abuse.

d. CARING establish and make available to their employees, and to their contractors and agents, policies that explain:

i. the federal and New Jersey laws that deal with false claims in Medicaid, Medicare and other federally funded health care programs; and

ii. the policies and procedures providers have in place to detect and prevent fraud, waste and abuse in these programs.

e. CARING require its relevant contractors to comply with these policies and request that those contractors disseminate this policy and make them readily available to their employees and managers.

B. Procedure for Reporting Fraud, Waste or Abuse:

1. If you are an employee at a CARING entity, a contractor of any CARING entity, an employee of a contractor or agent of a CARING entity and believe that there is fraud, waste or abuse in Medicaid, Medicare or other health care program receiving federal funds, or in any health care program involving state funds, or if any policy,

practice, or activity of any CARING entity or employee is in violation of any law or regulation, you should report your concern immediately as follows:

a. You may report directly to the Executive Director of Operations for the CARING entities. Your report should be in writing and sent to 407 W Delilah Road, Pleasantville, New Jersey 08232, attn: Executive Director of Operations. For a matter that you feel requires emergent attention, you may telephone the Executive Director of Operations at 609-484-7050 ext 206. Any telephone call must be followed by a written report; or

b. You may report your concerns in writing to your supervisor. Your supervisor shall then report the matter and forward your report up the chain of command for review and appropriate action. To the extent he/she is able, your supervisor(s) and others who review the material you provide will keep your name confidential if you wish; or

c. You may report directly to the DDD Compliance Officer, Division of Developmental Disabilities, P.O. Box 726, Trenton, NJ 08625, Phone: 800-626-6077; or

d. Call the toll-free NJ Fraud and Abuse Hotline at 1-888-9FRAUD5 (1-888-937-2835) and report any information about fraud, waste or abuse in Medicaid, DDD Community Care Waiver, NJ FamilyCare, General Assistance or any other program for which the Division of Medical Assistance and Health Services (DMAHS) is responsible in whole or in part. You can either speak to the hotline operator, or leave a message if the operator does not answer. You do not have to give your name if you do not want to. You might also receive a reward if your call leads to a recovery; or

e. Call the toll-free hotline established by the federal Office of Inspector General in the U.S. Department of Health and Human Services to report any fraud, waste or abuse involving Medicare or any other health care program involving only federal funds. That hotline number is 1-800-HHS-TIPS (1-800-447-8477). For more information about this hotline and about other ways to contact the Office of Inspector General, you can go to <http://oig.hhs.gov/hotline.html>; or

f. Call the New Jersey Medicaid Fraud Division at 888-937-2835 or <https://www.nj.gov/comptroller/divisions/medicaid/complaint.html>, or

g. You may also call the NJ Insurance Fraud Prosecutor Hotline: 877-55-FRAUD or <https://njinsurancefraud2.org/#report>.

2. As explained in C, below, if you report fraud, waste or abuse, you are protected as a “whistleblower” under a state law from any punishment or other retaliation. This state law is known as the “Conscientious Employee Protection Act”, and is described in the notice issued by the New Jersey Department of Labor and Workforce Development that can be found at [http://www.state.nj.us/labor/AD-270\(11X17\).pdf](http://www.state.nj.us/labor/AD-270(11X17).pdf). (see attached)

C. Whistleblower Protections

1. If any employee reasonably believes that some policy, practice, or activity of any CARING entity is in violation of law, a written complaint must be filed by that

employee with the Executive Director of Operations or the employee's supervisor as explained above.

2. CARING will not retaliate against an employee who in good faith, has made a protest or raised a complaint against some practice of a CARING entity, or of another individual or entity with whom CARING has a business relationship, on the basis of a reasonable belief that the practice is in violation of law, regulation or a clear mandate of public policy.

3. CARING will not retaliate against employees who disclose or threaten to disclose to a supervisor or a public body, any activity, policy, or practice of CARING that the employee reasonably believes is in violation of a law, or a rule, or regulation mandated pursuant to law or is in violation of a clear mandate of public policy concerning the health, safety, welfare, or protection of the environment. CARING reserves the right, however, to discipline persons who make bad faith, knowingly false, or vexatious complaints, reports or inquiries or who otherwise abuse this policy.

D. Determination and Review for disqualified Employees and Contractors

Background: Providers and MCOs are responsible for ensuring that any payments received from the State of New Jersey are not for items or services that are directly or indirectly furnished, ordered, directed, managed or prescribed in whole or in part by an excluded, unlicensed or uncertified individual or entity. Excluded individuals or entities are those identified by the State or federal government as not being allowed to participate in State or federally-funded health benefit programs, such as Medicaid, NJ FamilyCare, or Pharmaceutical Assistance to the Aged and Disabled (PAAD).

Procedure: (1) Prior to issuing any payment to a contractor or subcontractor who directly or indirectly will be furnishing, ordering, directing, managing or prescribing Medicaid health care items or services, performing billing or coding functions, or is involved in monitoring of health care provided by the CARING organization, and (2) prior to hiring any employee, the following databases shall be checked to confirm that no such contractor or prospective employee is excluded, unlicensed or uncertified. The databases shall be checked on a monthly basis thereafter as well:

1. State of New Jersey debarment list (mandatory):
<http://www.nj.gov/comptroller/divisions/medicaid/disqualified/> (updated 2021 to https://www.nj.gov/comptroller/doc/nj_debarment_list.pdf)
2. Federal exclusions database (mandatory): <https://exclusions.oig.hhs.gov/>
3. N.J. Treasurer's exclusions database (mandatory):
<http://www.state.nj.us/treasury/revenue/debarment/debsearch.shtml>
4. N.J. Division of Consumer Affairs licensure databases (mandatory):
<http://www.njconsumeraffairs.gov/Pages/verification.aspx>

5. N.J. Department of Health licensure database (mandatory):
<http://www.state.nj.us/health/guide/find-select-provider/>
6. Certified nurse aide and personal care assistant registry (mandatory, if applicable): <http://njna.psiexams.com/search.jsp>

Further Information on Relevant Federal and State Statutes

Distributed in compliance with the provisions of the Federal Deficit Reduction Act

The following information is provided for reference purposes only. Refer to the actual statute for the complete requirements.

1. Federal False Claims Act, 31 U.S.C. 3729-3733

The Act establishes liability when any person or entity improperly receives from or avoids payment to the Federal government--tax fraud excepted. In summary, the Act prohibits:

- a. Knowingly presenting, or causing to be presented to the Government a false claim for payment;
- b. Knowingly making, using, or causing to be made or used, a false record or statement to get a false claim paid or approved by the government;
- c. Conspiring to defraud the Government by getting a false claim allowed or paid;
- d. Falsely certifying the type or amount of property to be used by the Government;
- e. Certifying receipt of property on a document without completely knowing that the information is true;
- f. Knowingly buying Government property from an unauthorized officer of the Government, and;
- g. Knowingly making, using, or causing to be made or used a false record to avoid, or decrease an obligation to pay or transmit property to the Government.

Any individual or entity engaging in any of the seven categories of prohibited actions listed in 31 U.S.C. 3729(a), including the submission of false claims to federally-funded health care programs, shall be liable for a civil penalty which, as of 2020, was not less than \$11,665 and not more than \$23,331 per false claim, plus three times the amount of damages sustained by the federal government. The amount of the false claims penalty is to be adjusted periodically for inflation in accordance with a federal formula.

The U.S. Attorney General may bring an action under this law. In addition, the law provides that any “whistleblower” may bring an action under this act on his own behalf and for the United States Government. These actions, which must be filed in U.S. District Court, are known as “qui tam” actions. The Government, after reviewing the complaint and supporting evidence, may decide either to take over the action, or decline to do so, in which case the whistleblower may conduct the action. If either the Government or the whistleblower is successful, the whistleblower is entitled to receive a percentage of the recovery. If prosecuted by

the federal government, these qui tam actions are generally handled by the various U.S. Attorney's Offices, or by the U.S. Justice Department.

Federal Whistleblower Protections:

31 U.S.C. 3730(h) provides that any employee who is subject to retaliation or discrimination by an employer in the terms and conditions of employment because the employee lawfully sought to take action or assist in taking action under this act "shall be entitled to all relief necessary to make the employee whole." This includes reinstatement with seniority restored to what it would have been without the retaliation or discrimination, double the amount of back pay, interest on back pay, and compensation for any special damages sustained as a result of the employer's actions, including litigation costs and reasonable attorney's fees.

2. Federal Program Fraud Civil Remedies Act, 31 U.S.C. 3801-3812

Provides federal administrative remedies for false claims and statements, including those made to federally funded health care programs. As of 2020, the civil penalties are \$11,665 for each false claim or statement, and an assessment in lieu of damages sustained by the federal government of up to double damages for each false claim for which the Government makes a payment. The amount of the false claims penalty is to be adjusted periodically for inflation in accordance with a federal formula.

3. New Jersey Medical Assistance and Health Services Act – Criminal Penalties, N.J.S.A. 30:4D-17(a)-(d)

Provides criminal penalties for individuals and entities engaging in fraud or other criminal violations relating to Title XIX-funded programs. They include: (a) fraudulent receipt of payments or benefits: fine of up to \$10,000, imprisonment for up to 3 years, or both; (b) false claims, statements or omissions, or conversion of benefits or payments: fine of up to \$10,000, imprisonment for up to 3 years, or both; (c) kickbacks, rebates and bribes: fine of up to \$10,000, imprisonment for up to 3 years, or both; and (d) false statements or representations about conditions or operations of an institution or facility to qualify for payments: fine of up to \$3,000, or imprisonment for up to 1 year, or both. Criminal prosecutions are generally handled by the Medicaid Fraud Section within the Office of Insurance Fraud Prosecutor, in the N.J. Division of Criminal Justice.

Civil Remedies, N.J.S.A. 30:4D-7.h., N.J.S.A. 30:4D-17(e)-(i); N.J.S.A. 30:4D-17.1.a.

In addition to the criminal sanctions discussed in section 3 above, violations of N.J.S. 30:4D-17(a)-(d) can also result in the following civil sanctions: (a) unintentional violations: recovery of overpayments and interest; (b) intentional violation: recovery of overpayments, interest, up to triple damages, and, as indicated in section D.8, below, a penalty not less than and not more than the civil penalty allowed under the federal False Claims Act (31 U.S.C. s.3729 et seq.), as it may be adjusted for inflation pursuant to the federal Civil Penalties Inflation

Adjustment Act of 1990, Pub.L.101-410 for each excessive claim for assistance, benefits or payments. for each false claim as a result of the NJ False Claims Act. Recovery actions are generally pursued administratively by the Division of Medical Assistance and Health Services, with the assistance of the Division of Law in the N.J. Attorney General's Office, and can be obtained against any individual or entity responsible for or receiving the benefit or possession of the incorrect payments.

In addition to recovery actions, violations can result in the exclusion of an individual or entity from participation in all health care programs funded in whole or in part by the N.J. Division of Medical Assistance and Health Services. Recovery and exclusion can also be obtained as part of a criminal prosecution by the Medicaid Fraud Section of the N.J. Division of Criminal Justice.

4. N.J. Health Care Claims Fraud Act -N.J.S.A. 2C:21-4.2 & 4.3; N.J.S.A. 2C:51-5

Provides the following criminal penalties for health care claims fraud, including the submission of false claims to programs funded in whole or in part with state funds:

- a. A practitioner who knowingly commits health care claims fraud in the course of providing professional services is guilty of a crime of the second degree, and is subject to a fine of up to 5 times the monetary benefits obtained or sought to be obtained and to permanent forfeiture of his license;
- b. A practitioner who recklessly commits health care claims fraud in the course of providing professional services is guilty of a crime of the third degree, and is subject to a fine of up to 5 times the pecuniary benefit obtained or sought to be obtained and the suspension of his license for up to 1 year;
- c. A person who is not a practitioner subject to paragraph a. or b. above (for example, someone who is not licensed, registered or certified by an appropriate State agency as a health care professional) is guilty of a crime of the third degree if that person knowingly commits health care claims fraud. Such a person is guilty of a crime of the second degree if that person knowingly commits 5 or more acts of health care claims fraud, and the aggregate monetary benefit obtained or sought to be obtained is at least \$1,000. In addition to all other criminal penalties allowed by law, such a person may be subject to a fine of up to 5 times the monetary benefit obtained or sought to be obtained;
- d. A person who is not a practitioner subject to paragraph a. or b. above is guilty of a crime of the fourth degree if that person recklessly commits health care claims fraud. In addition to all other criminal penalties allowed by law, such a person may be subject to a fine of up to 5 times the monetary benefit obtained or sought to be obtained.

5. The Uniform Enforcement Act -N.J.S. 45:1-21. b. and o.

Provides that a licensure board within the N.J. Division of Consumer Affairs "may refuse to admit a person to an examination or may refuse to issue or may suspend or revoke any certificate, registration or license issued by the board" who

as engaged in “dishonesty, fraud, deception, misrepresentation, false promise or false pretense; or has “[a]dvertised fraudulently in any manner.”

6. N.J. Consumer Fraud Act -N.J.S. 56:8-2, 56:8-3.1, 56:8-13, 56:8-14 and 56:8-15.

Makes unlawful the use of “any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression, or omission of any material fact”, with the intent that others rely upon it, in connection with the sale, rental or distribution of any items or services by a person, or with the subsequent performance of that person. This law permits the N.J. Attorney General, in addition to any other penalty provided by law, to assess a penalty of not more than \$10,000 for the first offense and not more than \$20,000 for the second and each subsequent offense. Restitution to the victim also can be ordered.

7. N.J. Conscientious Employee Protection Act, -“Whistleblower Act”, N.J.S.A. 34:19-1 et. seq.

New Jersey law prohibits an employer from taking any retaliatory action against an employee because the employee does any of the following:

- a. Discloses, or threatens to disclose, to a supervisor or to a public body an activity, policy or practice of the employer or another employer, with whom there is a business relationship, that the employee reasonably believes is in violation of a law, or a rule or regulation issued under the law, or, in the case of an employee who is a licensed or certified health care professional, reasonably believes constitutes improper quality of patient care;
- b. Provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any violation of law, or a rule or regulation issued under the law by the employer or another employer, with whom there is a business relationship, or, in the case of an employee who is a licensed or certified health care professional, provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into quality of patient care; or
- c. Provides information involving deception of, or misrepresentation to, any shareholder, investor, client, patient, customer, employee, former employee, retiree or pensioner of the employer or any governmental entity.
- d. Provides information regarding any perceived criminal or fraudulent activity, policy or practice of deception or misrepresentation which the employee reasonably believes may defraud any shareholder, investor, client, patient, customer, employee, former employee, retiree or pensioner of the employer or any governmental entity.

- e. Objects to, or refuses to participate in, any activity, policy or practice which the employee reasonably believes:
 - i. is in violation of a law, or a rule or regulation issued under the law or, if the employee is a licensed or certified health care professional, constitutes improper quality of patient care;
 - ii. is fraudulent or criminal; or
 - iii. is incompatible with a clear mandate of public policy concerning the public health, safety or welfare or protection of the environment. N.J.S.A. 34:19-3.

The protection against retaliation, when a disclosure is made to a public body, does not apply unless the employee has brought the activity, policy or practice to the attention of a supervisor of the employee by written notice and given the employer a reasonable opportunity to correct the activity, policy or practice. However, disclosure is not required where the employee reasonably believes that the activity, policy or practice is known to one or more supervisors of the employer or where the employee fears physical harm as a result of the disclosure, provided that the situation is emergent in nature.

8. New Jersey False Claims Act, N.J.S.A. 2A:32C-1 et. seq.

The New Jersey False Claims Act (NJFCA) was enacted in January, 2008 and became effective in March 2008. It has similar provisions to the federal False Claims Act. For example, The Attorney General may bring an action against an individual or entity that makes a false claim. In addition, the NJFCA also allows for individuals to bring a private right of action in the name of the State against wrongdoers and be able to collect a penalty from those wrongdoers. Under the NJFCA, the civil penalties are not less than and not more than the civil penalty allowed under the federal False Claims Act (31 U.S.C. s.3729 et seq.), as it may be adjusted for inflation pursuant to the federal Civil Penalties Inflation Adjustment Act of 1990, Pub.L.101-410 per false or fraudulent claim under the NJ Medical Assistance and Health Services Act.

The NJFCA provides that a person will be liable for the same penalties as under the federal False Claims Act but to the State of NJ if that person:

- a. Knowingly presents or causes to be presented to an employee, officer or agent of the State, or to any contractor, grantee, or other recipient of State funds, a false or fraudulent claim for payment or approval;
- b. 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 State;
- c. Conspires to defraud the State by getting a false or fraudulent claim allowed or paid by the State;
- d. Has possession, custody, or control of public property or money used or to be used by the State and knowingly delivers or causes to be delivered less property than the amount for which the person receives a certificate or receipt;

- e. Is authorized to make or deliver a document certifying receipt of property used or to be used by the State and, intending to defraud the entity, makes or delivers a receipt without completely knowing that the information on the receipt is true;
- f. Knowingly buys, or receives as a pledge of an obligation or debt, public property from any person who lawfully may not sell or pledge the property; or
- g. 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 State.

In addition to the above, the NJ False Claims Act has whistleblower protections within it similar to the ones under the federal False Claims Act.

9. New Jersey Insurance Fraud Prevention Act, N.J.S.A 17:33A-1

The purpose of this act is to aggressively confront the problem of insurance fraud in New

Jersey by facilitating the detection of insurance fraud, eliminating the occurrence of such fraud through the development of fraud prevention programs, requiring the restitution of fraudulently obtained insurance benefits, and reducing the amount of premium dollars used to pay fraudulent claims. A person violates this Act, as an example, by knowingly making any written or oral statement as part of, or in support of or opposition to, a claim for payment or other benefit pursuant to an insurance policy; preparing such a statement; concealing or knowingly failing to disclose the occurrence of an event which affects any person's initial or continued right or entitlement to an insurance; or knowingly provides false information on an insurance policy application or to assist someone in falsely acquiring insurance proceeds. Any person who violates this Act shall be liable, in a civil action brought by the commissioner in a court of competent jurisdiction, for a penalty of not more than \$ 5,000 for the first violation, \$ 10,000 for the second violation and \$ 15,000 for each subsequent violation, which amounts may be adjusted by the state.

E. Websites for Obtaining Additional Information:

- Deficit Reduction Act – Public Law 109-171 - www.gpoaccess.gov/plaws/index.html (insert public law 109-171 in the quick search box)
- New Jersey Statutes - www.njleg.state.nj.us
- U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, Deficit Reduction Act - <http://www.cms.hhs.gov/DeficitReductionAct/>

Further Information on Relevant Federal and State Statutes

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1. Federal False Claims Act, 31 U.S.C. 3729-3733

The Act establishes liability when any person or entity improperly receives from or avoids payment to the Federal government--tax fraud excepted. In summary, the Act prohibits:

- a. Knowingly presenting, or causing to be presented to the Government a false claim for payment;
- b. Knowingly making, using, or causing to be made or used, a false record or statement to get a false claim paid or approved by the government;
- c. Conspiring to defraud the Government by getting a false claim allowed or paid;
- d. Falsely certifying the type or amount of property to be used by the Government;
- e. Certifying receipt of property on a document without completely knowing that the information is true;
- f. Knowingly buying Government property from an unauthorized officer of the Government, and;
- g. Knowingly making, using, or causing to be made or used a false record to avoid, or decrease an obligation to pay or transmit property to the Government.

Any individual or entity engaging in any of the seven categories of prohibited actions listed in 31 U.S.C. 3729(a), including the submission of false claims to federally-funded health care programs, shall be liable for a civil penalty which, as of 2020, was not less than \$11,665 and not more than \$23,331 per false claim, plus three times the amount of damages sustained by the federal government. The amount of the false claims penalty is to be adjusted periodically for inflation in accordance with a federal formula.

The U.S. Attorney General may bring an action under this law. In addition, the law provides that any “whistleblower” may bring an action under this act on his own behalf and for the United States Government. These actions, which must be filed in U.S. District Court, are known as “qui tam” actions. The Government, after reviewing the complaint and supporting evidence, may decide either to take over the action, or decline to do so, in which case the whistleblower may conduct the action. If either the Government or the whistleblower is successful, the whistleblower is entitled to receive a percentage of the recovery. If prosecuted by the federal government, these qui tam actions are generally handled by the various U.S. Attorney’s Offices, or by the U.S. Justice Department.

Federal Whistleblower Protections:

31 U.S.C. 3730(h) provides that any employee who is subject to retaliation or discrimination by an employer in the terms and conditions of employment because the employee lawfully sought to take action or assist in taking action under this act “shall be entitled to all relief necessary to make the employee whole.” This includes reinstatement with seniority restored to what it would have been without the retaliation or discrimination, double the amount of back pay, interest on back pay, and compensation for any special damages sustained as a result of the employer’s actions, including litigation costs and reasonable attorney’s fees.

2. Federal Program Fraud Civil Remedies Act, 31 U.S.C. 3801-3812

Provides federal administrative remedies for false claims and statements, including those made to federally funded health care programs. As of 2020, the civil penalties are \$11,665 for each false claim or statement, and an assessment in lieu of damages sustained by the federal government of up to double damages for each false claim for which the Government makes a payment. The amount of the false claims penalty is to be adjusted periodically for inflation in accordance with a federal formula.

3. New Jersey Medical Assistance and Health Services Act – Criminal Penalties, N.J.S.A. 30:4D-17(a)-(d)

Provides criminal penalties for individuals and entities engaging in fraud or other criminal violations relating to Title XIX-funded programs. They include: (a) fraudulent receipt of payments or benefits: fine of up to \$10,000, imprisonment for up to 3 years, or both; (b) false claims, statements or omissions, or conversion of benefits or payments: fine of up to \$10,000, imprisonment for up to 3 years, or both; (c) kickbacks, rebates and bribes: fine of up to \$10,000, imprisonment for up to 3 years, or both; and (d) false statements or representations about conditions or operations of an institution or facility to qualify for payments: fine of up to \$3,000, or imprisonment for up to 1 year, or both. Criminal prosecutions are generally handled by the Medicaid Fraud Section within the Office of Insurance Fraud Prosecutor, in the N.J. Division of Criminal Justice.

Civil Remedies, N.J.S.A. 30:4D-7.h., N.J.S.A. 30:4D-17(e)-(i); N.J.S.A. 30:4D-17.1.a.

In addition to the criminal sanctions discussed in section 3 above, violations of N.J.S. 30:4D-17(a)-(d) can also result in the following civil sanctions: (a) unintentional violations: recovery of overpayments and interest; (b) intentional violation: recovery of overpayments, interest, up to triple damages, and, as indicated in section D.8, below, a penalty not less than and not more than the civil penalty allowed under the federal False Claims Act (31 U.S.C. s.3729 et seq.), as it may be adjusted for inflation pursuant to the federal Civil Penalties Inflation Adjustment Act of 1990, Pub.L.101-410 for each excessive claim for assistance, benefits or payments. for each false claim as a result of the NJ False Claims Act. Recovery actions are generally pursued administratively by the Division of Medical Assistance and Health Services, with the assistance of the Division of

Law in the N.J. Attorney General's Office, and can be obtained against any individual or entity responsible for or receiving the benefit or possession of the incorrect payments.

In addition to recovery actions, violations can result in the exclusion of an individual or entity from participation in all health care programs funded in whole or in part by the N.J. Division of Medical Assistance and Health Services. Recovery and exclusion can also be obtained as part of a criminal prosecution by the Medicaid Fraud Section of the N.J. Division of Criminal Justice.

4. N.J. Health Care Claims Fraud Act -N.J.S.A. 2C:21-4.2 & 4.3; N.J.S.A. 2C:51-5

Provides the following criminal penalties for health care claims fraud, including the submission of false claims to programs funded in whole or in part with state funds:

- a. A practitioner who knowingly commits health care claims fraud in the course of providing professional services is guilty of a crime of the second degree, and is subject to a fine of up to 5 times the monetary benefits obtained or sought to be obtained and to permanent forfeiture of his license;
- b. A practitioner who recklessly commits health care claims fraud in the course of providing professional services is guilty of a crime of the third degree, and is subject to a fine of up to 5 times the pecuniary benefit obtained or sought to be obtained and the suspension of his license for up to 1 year;
- c. A person who is not a practitioner subject to paragraph a. or b. above (for example, someone who is not licensed, registered or certified by an appropriate State agency as a health care professional) is guilty of a crime of the third degree if that person knowingly commits health care claims fraud. Such a person is guilty of a crime of the second degree if that person knowingly commits 5 or more acts of health care claims fraud, and the aggregate monetary benefit obtained or sought to be obtained is at least \$1,000. In addition to all other criminal penalties allowed by law, such a person may be subject to a fine of up to 5 times the monetary benefit obtained or sought to be obtained;
- d. A person who is not a practitioner subject to paragraph a. or b. above is guilty of a crime of the fourth degree if that person recklessly commits health care claims fraud. In addition to all other criminal penalties allowed by law, such a person may be subject to a fine of up to 5 times the monetary benefit obtained or sought to be obtained.

5. The Uniform Enforcement Act -N.J.S. 45:1-21. b. and o.

Provides that a licensure board within the N.J. Division of Consumer Affairs "may refuse to admit a person to an examination or may refuse to issue or may suspend or revoke any certificate, registration or license issued by the board" who as engaged in "dishonesty, fraud, deception, misrepresentation, false promise or false pretense:, or has "[a]dvertised fraudulently in any manner."

6. N.J. Consumer Fraud Act -N.J.S. 56:8-2, 56:8-3.1, 56:8-13, 56:8-14 and 56:8-15.

Makes unlawful the use of “any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression, or omission of any material fact”, with the intent that others rely upon it, in connection with the sale, rental or distribution of any items or services by a person, or with the subsequent performance of that person. This law permits the N.J. Attorney General, in addition to any other penalty provided by law, to assess a penalty of not more than \$10,000 for the first offense and not more than \$20,000 for the second and each subsequent offense. Restitution to the victim also can be ordered.

7. N.J. Conscientious Employee Protection Act, -“Whistleblower Act”, N.J.S.A. 34:19-1 et. seq.

New Jersey law prohibits an employer from taking any retaliatory action against an employee because the employee does any of the following:

- a. Discloses, or threatens to disclose, to a supervisor or to a public body an activity, policy or practice of the employer or another employer, with whom there is a business relationship, that the employee reasonably believes is in violation of a law, or a rule or regulation issued under the law, or, in the case of an employee who is a licensed or certified health care professional, reasonably believes constitutes improper quality of patient care;
- b. Provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any violation of law, or a rule or regulation issued under the law by the employer or another employer, with whom there is a business relationship, or, in the case of an employee who is a licensed or certified health care professional, provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into quality of patient care; or
- c. Provides information involving deception of, or misrepresentation to, any shareholder, investor, client, patient, customer, employee, former employee, retiree or pensioner of the employer or any governmental entity.
- d. Provides information regarding any perceived criminal or fraudulent activity, policy or practice of deception or misrepresentation which the employee reasonably believes may defraud any shareholder, investor, client, patient, customer, employee, former employee, retiree or pensioner of the employer or any governmental entity.
- e. Objects to, or refuses to participate in, any activity, policy or practice which the employee reasonably believes:

- i. is in violation of a law, or a rule or regulation issued under the law or, if the employee is a licensed or certified health care professional, constitutes improper quality of patient care;
- ii. is fraudulent or criminal; or
- iii. is incompatible with a clear mandate of public policy concerning the public health, safety or welfare or protection of the environment. N.J.S.A. 34:19-3.

The protection against retaliation, when a disclosure is made to a public body, does not apply unless the employee has brought the activity, policy or practice to the attention of a supervisor of the employee by written notice and given the employer a reasonable opportunity to correct the activity, policy or practice. However, disclosure is not required where the employee reasonably believes that the activity, policy or practice is known to one or more supervisors of the employer or where the employee fears physical harm as a result of the disclosure, provided that the situation is emergent in nature.

8. New Jersey False Claims Act, N.J.S.A. 2A:32C-1 et. seq.

The New Jersey False Claims Act (NJFCA) was enacted in January, 2008 and became effective in March 2008. It has similar provisions to the federal False Claims Act. For example, The Attorney General may bring an action against an individual or entity that makes a false claim. In addition, the NJFCA also allows for individuals to bring a private right of action in the name of the State against wrongdoers and be able to collect a penalty from those wrongdoers. Under the NJFCA, the civil penalties are not less than and not more than the civil penalty allowed under the federal False Claims Act (31 U.S.C. s.3729 et seq.), as it may be adjusted for inflation pursuant to the federal Civil Penalties Inflation Adjustment Act of 1990, Pub.L.101-410 per false or fraudulent claim under the NJ Medical Assistance and Health Services Act.

The NJFCA provides that a person will be liable for the same penalties as under the federal False Claims Act but to the State of NJ if that person:

- a. Knowingly presents or causes to be presented to an employee, officer or agent of the State, or to any contractor, grantee, or other recipient of State funds, a false or fraudulent claim for payment or approval;
- b. 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 State;
- c. Conspires to defraud the State by getting a false or fraudulent claim allowed or paid by the State;
- d. Has possession, custody, or control of public property or money used or to be used by the State and knowingly delivers or causes to be delivered less property than the amount for which the person receives a certificate or receipt;
- e. Is authorized to make or deliver a document certifying receipt of property used or to be used by the State and, intending to defraud the entity, makes or delivers a receipt without completely knowing that the information on the receipt is true;

- f. Knowingly buys, or receives as a pledge of an obligation or debt, public property from any person who lawfully may not sell or pledge the property; or
- g. 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 State.

In addition to the above, the NJ False Claims Act has whistleblower protections within it similar to the ones under the federal False Claims Act.

10. New Jersey Insurance Fraud Prevention Act, N.J.S.A 17:33A-1

The purpose of this act is to aggressively confront the problem of insurance fraud in New Jersey by facilitating the detection of insurance fraud, eliminating the occurrence of such fraud through the development of fraud prevention programs, requiring the restitution of fraudulently obtained insurance benefits, and reducing the amount of premium dollars used to pay fraudulent claims. A person violates this Act, as an example, by knowingly making any written or oral statement as part of, or in support of or opposition to, a claim for payment or other benefit pursuant to an insurance policy; preparing such a statement; concealing or knowingly failing to disclose the occurrence of an event which affects any person's initial or continued right or entitlement to an insurance; or knowingly provides false information on an insurance policy application or to assist someone in falsely acquiring insurance proceeds. Any person who violates this Act shall be liable, in a civil action brought by the commissioner in a court of competent jurisdiction, for a penalty of not more than \$ 5,000 for the first violation, \$ 10,000 for the second violation and \$ 15,000 for each subsequent violation, which amounts may be adjusted by the state.

E. Websites for Obtaining Additional Information:

- Deficit Reduction Act – Public Law 109-171 - www.gpoaccess.gov/plaws/index.html (insert public law 109-171 in the quick search box)
- New Jersey Statutes - www.njleg.state.nj.us
- U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, Deficit Reduction Act - <http://www.cms.hhs.gov/DeficitReductionAct/>