

LAW AND PUBLIC SAFETY

OFFICE OF THE ATTORNEY GENERAL

Insurance Fraud Detection Reward Program

Adopted New Rules: N.J.A.C. 13:88-3

Proposed: February 17, 2004 at 36 N.J.R. 917(a)

Adopted: May 18, 2004 by Peter C. Harvey, Attorney General of New Jersey

Filed: June 14, 2004, **without change.**

Authority: N.J.S.A. 2C:21-4.7, Executive Reorganization Plan No. 7 (1998), Executive Order No. 9 (Hughes) and N.J.S.A. 52:14B-1 et seq.

Effective Date: July 6, 2004

Expiration Date:

Summary of Public Comments and Agency Responses:

The Department of Law and Public Safety received one timely comment from the Independent Insurance Agents & Brokers of New Jersey.

COMMENT: The comment supported the proposed rule and requested clarification of proposed N.J.A.C. 13:88-3.10 as to whether independent insurance producers were eligible for the reward program.

RESPONSE: The Department appreciates the support of its proposal and further states that independent insurance producers are not eligible for the reward program when they come into possession of information during the course of an insurance transaction in which

the independent insurance producer is working on behalf of an insurance company.

COMMENT: The comment also requested a change to N.J.A.C. 13:88-3.6 to permit individuals to submit the reward application form within 60 days of the individual's initial report.

RESPONSE: Upon review, the Department has determined not to change this provision. The rules provide a number of different avenues to obtain a reward application and thirty days allows sufficient time in which to return a completed reward application.

Federal Standards Statement

A Federal standards analysis is not required as the proposed new rules regulate the insurance fraud prevention and detection activities in this State. These rules relate to an insurance fraud reporting program which is the subject of State law and are not subject to any Federal requirements or standards.

Full text of the adoption follows:

CHAPTER 88

OFFICE OF INSURANCE FRAUD PROSECUTOR

SUBCHAPTER 3. INSURANCE FRAUD DETECTION REWARD PROGRAM 13:88-

3.1 Scope

This subchapter applies to all persons in the State of New Jersey.

13:88-3.2 Definitions

For the purposes of this subchapter, the following terms have the following meanings, unless the context clearly indicates otherwise:

"CLASS" means the Case Screening, Litigation, and Analytical Support Section of the Office of the Insurance Fraud Prosecutor.

"Conviction" means the entry of a judgment of conviction at the time sentence is imposed by the court.

"Value of the fraud" means the direct or indirect gain or advantage realized by the person or entities convicted of the crime of insurance fraud, or the direct or indirect gain or advantage that would have been realized by the person or entities convicted of the crime of insurance fraud if the fraud had not been detected. The term does not include amounts imposed or collected as interest, penalties and/or fines.

13:88-3.3 Construction

(a) These rules shall be liberally construed to permit the OIFP to discharge its statutory function.

(b) Upon appropriate notice, these rules may be relaxed for good cause in a particular situation in order to effectuate the purposes of N.J.S.A. 2C:21-4.7. Statutory time limits shall not be relaxed.

13:88-3.4 Fraud reporting procedure

(a) Individuals may report suspected cases of health care claims fraud, insurance fraud or any other criminal offense related to an insurance transaction by one of the following methods:

1. Call the OIFP toll free hotline at 1-877-55-FRAUD (1-877-553-7283) during regular business hours (Monday through Friday 9:00 A.M. to 5:00 P.M.) and speak to a hotline operator;

2. Call the OIFP toll free hotline number at 1-877-55-FRAUD (1-877-553-7283) after regular business hours and leave a detailed message, including a name and phone number at which the caller can be reached;

3. Log onto the OIFP website (www.njinsurancefraud.org) and submit an online report;

4. Send an electronic mail message to the OIFP at njinsurancefraud@njdcj.org; or

5. Write directly to the OIFP at the following address:
New Jersey Department of Law and Public Safety, Division of Criminal Justice, Office of the Insurance Fraud Prosecutor, P.O. Box 094, Trenton, N.J. 08625-0094, Attention: CLASS.

13:88-3.5 Reward application procedure

(a) A reward for information submitted to the OIFP under N.J.A.C. 13:88-3.4 requires the completion of a reward application form prescribed by the OIFP, included in the subchapter Appendix and incorporated herein by reference, in addition to the provision of information to the OIFP under N.J.A.C. 13:88-3.4. The reward application form must be completed in its entirety, signed and notarized. The reward application form must be mailed to the OIFP at the address listed in N.J.A.C. 13:88-3.4(a)5.

(b) The person submitting the application may, at the discretion of the OIFP, be interviewed by the OIFP with regard to the information the applicant is submitting for consideration. An applicant may also be required to give his or her verbal statement under oath and sign a written memorialization of his or her statement.

(c) The application form may be obtained by requesting one in writing from the OIFP, calling the OIFP toll free hotline and requesting one, or logging onto the OIFP website and downloading the form.

(d) The OIFP shall acknowledge to the applicant, in writing, receipt of his or her application.

13:88-3.6 Timely filing of applications for reward

In all cases where relevant information is provided by a person without the simultaneous filing of a reward application pursuant to this subchapter, that person may subsequently file an application for reward consideration no later than 30 days from the date on which the person initially provided information to the OIFP pursuant to N.J.A.C. 13:88-3.4.

13:88-3.7 Confidentiality

(a) Upon request of the applicant at the time the application is made, the OIFP and any other governmental agency involved in the criminal proceeding shall not disclose the identity of the applicant. This is subject, however, to any statute, rule of Court or judicial decision which may require divulgence of such identity

to certain parties including, in certain circumstances, a criminal defendant.

(b) All information and materials received by or maintained by the OIFP pursuant to these rules are confidential and shall not be subject to public access pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

13:88-3.8 Criteria for evaluating a reward application

(a) The OIFP may pay a reward upon the arrest, prosecution, and conviction of a person or entity for health care claims fraud, insurance fraud or any other criminal offense involving or related to an insurance transaction.

(b) A person who provides information under N.J.A.C. 13:88-3.4 and submits a timely reward application form under N.J.A.C. 13:88-3.5 shall be eligible for a reward if the information:

1. Led to the arrest, prosecution and conviction of a specific individual(s) or entity(ies) for specified conduct occurring during a particular time period, as detailed in the reward program application submitted by the informant pursuant to N.J.A.C. 13:88-3.5; or

2. Directly led to the arrest, prosecution and conviction of other individuals or other entities for specified conduct occurring during a particular time period as detailed in the reward program application submitted by the informant pursuant to N.J.A.C. 13:88-3.5.

(c) The OIFP shall not grant a reward for information relating to an individual or entity that, at the time the information is provided, is already the subject of a referral to the OIFP; is already the subject of an investigation by the OIFP, either civilly or criminally; or is already the subject of an investigation by the New Jersey Department of Human Services; the New Jersey Department of Health and Senior Services; the Health Care Financing Agency and the Office of the Inspector General; the New Jersey Department of Banking and Insurance; the New Jersey Department of Consumer Affairs and its licensing boards; or any other Federal, State, county or municipal agency.

13:88-3.9 Determination and notification of eligibility for reward

(a) Upon the conviction of persons or entities who have committed health care claims fraud, insurance fraud or any other criminal offense related to an insurance transaction, the OIFP shall notify the applicant within 90 days of the conviction as to the OIFP's determination of the eligibility of the applicant for the reward.

(b) Written notification shall contain the specific reasons for a determination and inform the applicant that:

1. There is insufficient causal relationship between the information provided and the arrest, prosecution and conviction of the individuals or entities named in the matter and the applicant is not eligible for a reward;

2. The information provided proximately resulted in the arrest, prosecution and conviction of the individuals or entities named in the matter and the applicant is eligible for a reward; or

3. There is a need for further examination of the application necessitating a written response and/or personal appearance of the applicant for further information before a determination as to eligibility can be made.

13:88-3.10 Persons not eligible for a reward

(a) The following persons are not eligible to receive a reward under this subchapter:

1. An individual who was or is an immediate family member of an officer or employee of any of the agencies or entities listed in N.J.A.C. 13:88-3.8(c), or any individual working on behalf of any of the agencies or entities listed in N.J.A.C. 13:88-3.8(c) or who is an immediate family member of an individual working on behalf of any of the agencies or entities listed in N.J.A.C. 13:88-3.8(c), at the time he or she came into possession of, or divulged, information leading to an arrest, prosecution and conviction;

2. Any other Federal, State, county or municipal employee, contractor or grantee shall not be eligible for a reward under this subchapter if the information submitted came to their knowledge in the course of their official duties;

3. Any individual who was or is an employee of an insurance company, as defined in N.J.S.A. 2C:21-4.5 ,or an individual working on behalf of an insurance company as defined in

N.J.S.A. 2C:21-4.5, or the immediate family member of an employee of an insurance company as defined in N.J.S.A. 2C:21-4.5 or of an individual working on behalf of an insurance company as defined in N.J.S.A. 2C:21-4.5, at the time he or she came into possession of, or divulged, information leading to an arrest, prosecution and conviction;

4. An individual or entity that participated in or facilitated the offense with respect to which payment of the reward would be made;

5. An individual or entity who is eligible for an award under any other state, Federal or other reward program because the individual previously reported to another state, Federal or other entity substantially the same information on suspected health care claims fraud, insurance fraud or any other criminal offense involving or related to an insurance transaction, as they subsequently reported to the OIFP under these rules; and

6. An individual who knowingly provides false information to the OIFP.

13:88-3.11 Post-determination claiming and payment of rewards

(a) Within 20 days of receipt of a notification of reward eligibility pursuant to N.J.A.C. 13:88-3.8, the applicant shall make a formal claim for such reward by forwarding to the OIFP a written acknowledgment of the notification, a request for the reward, and the name and address to which the reward should be delivered.

(b) No reward shall exceed either five percent of the value of the fraud or \$25,000, whichever is less; if more than one individual or entity is eligible to receive a reward in a particular case, the Insurance Fraud Prosecutor shall allocate the total reward amount (of up to five percent of the value of the fraud and not exceeding \$25,000, whichever is less), among the eligible claimants.

(c) The OIFP shall make reward payments as promptly as possible, but in no event shall payment be made before all direct appeals of the conviction have been exhausted.

(d) No OIFP employee shall make an offer or promise or otherwise bind the OIFP with respect to payment of any reward under this subchapter or the amount of the reward.

(e) If, after a reward is accepted, the OIFP finds that the recipient was ineligible to receive the reward, the OIFP shall not be liable for the reward and the recipient shall refund all monies received to the OIFP.

(f) Reward amounts shall be reported to the appropriate state and Federal taxing authorities as required by law. Applicants shall provide all information necessary to making such reports.

13:88-3.12 Multiple applications

(a) Except when a contrary result is required to prevent manifest injustice, in cases where two or more applicants submit substantially identical information which proximately results in the arrest, prosecution and conviction of persons or entities who

have committed health care claims fraud, insurance fraud or any other criminal offense related to an insurance transaction, only the person who has filed his or her application first in time shall be considered for the receipt of a reward pursuant to this subchapter.

(b) In cases where two or more applicants submit different information which proximately results in the arrest, prosecution and conviction of persons or entities who have committed health care claims fraud, insurance fraud or any other criminal offense related to an insurance transaction, thereby rendering both applicants eligible for a reward pursuant to this subchapter, the Insurance Fraud Prosecutor may apportion the amount of the reward among the applicants based upon consideration of relevant factors including, but not limited to:

1. The timing (chronological order) of each application filed;
2. The relative overall accuracy of information in each application filed; and
3. The relative extent of cooperation with the prosecution by each applicant in the particular case for which the information has been provided.

(c) Upon such apportionment set forth in (b) above, the Insurance Fraud Prosecutor shall provide each eligible applicant with a written statement of the reasons for the determination.

Except when a contrary result is required to prevent manifest injustice, if a person supplies information which proximately results in the arrest of and institution of criminal charges against persons or entities for health care claims fraud, insurance fraud or any other criminal offense relating to an insurance transaction and in the discretion of the OIFP those charges are subsequently dismissed, no person shall be eligible pursuant to this subchapter for a reward from those proceedings.

13:88-3.14 Appeals

The decision of the Insurance Fraud Prosecutor regarding reward eligibility and reward payment pursuant to this subchapter shall be final unless the reward recipients disagree, in which event, the matter shall be referred to the Attorney General whose decision shall be final and shall not be subject to judicial review.

13:88-3.15 Severability

If any rule, sentence, paragraph or section of these rules, or the application thereof to any persons or circumstances, shall be adjudged by a court of competent jurisdiction to be invalid, or if by legislative action any rule shall lose its force and effect, such judgment or action shall not affect, impair or void the remainder of these rules.