State of New Jersey

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OFFICE OF THE STATE COMPTROLLER
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Acting State Comptroller

JOSH LICHTBLAU
Director

MEMORANDUM

Date: March 6, 2023
To: Designated Compliance Officer
From: Amanda Shiber, Policy Analyst
Office of State Comptroller, Medicaid Fraud Division
Sent via Electronic Mail.

RE: CALENDAR YEAR 2023 CERTIFICATION OF COMPLIANCE
SECTION 6032 OF THE FEDERAL DEFICIT REDUCTION ACT OF 2005, 42 U.S.C. §1396a(a)(68)

Section 6032 of the Federal Deficit Reduction Act of 2005 requires entities that received or made payments of $5 million or more (aggregate) in Title XIX funds during the previous federal fiscal year (October 1, 2021 – September 30, 2022) to assist in preventing, detecting and addressing fraud, waste and abuse in federal health care programs by taking certain actions, including:

- Establishing written policies for employees, contractors and agents that provide detailed information about federal and state false claims statutes and penalties, and whistleblower protections.
- Educating employees, contractors and agents on the policies and procedures for detecting and preventing fraud, waste and abuse.
- Providing information in the employee handbook, if one exists, about federal and state false claims statutes, penalties and whistleblower protections.

The New Jersey Medicaid Program has identified your entity as having received payments of $5 million, or more, in Title XIX funds. Ultimately, it is the responsibility of each entity to determine whether it meets the $5 million threshold and, thus, must submit a completed Certification, regardless of whether such entity is identified by the New Jersey Medicaid Program.

If the aggregated payments for your entities meets the $5 million threshold, please complete and return the attached Section 6032 Certification Form no later than 30 days from the date of this electronic mail. **Please note: the certification form and questionnaire has been updated for Calendar Year 2023; please use the updated form**. Completed forms should be emailed to Section6032@osc.nj.gov.

If you are reporting for multiple entities, and the responses for each are the same, you may submit one Certification Form. Please be sure to include the names, Medicaid identification numbers, NPI numbers and IRS identification numbers for **each entity** for which you are reporting.

Selected entities will be asked to submit documentation to substantiate their responses. Please be prepared to send documentation upon request.

Compliance with Section 6032 is a condition of participation in all Title XIX programs. Failure to comply could result in termination of your organization's provider agreement with the Medicaid program and/or other sanctions.

Please feel free to contact me with questions. Thank you in advance for your attention to this matter.

By: /s/ Amanda Shiber
Sincerely,

Amanda Shiber
Policy Analyst, Medicaid Fraud Division
Office of the State Comptroller
20 W. State Street
P.O. Box 025
Trenton, NJ 08625
609-789-5088
Section6032@osc.nj.gov

Attachments:

- CY 2023 Section 6032 Certification Form
- New Jersey DMAHS Newsletter Volume 33 Number 02 (NEW)
- New Jersey DMAHS Newsletter Volume 33 Number 03 (NEW
- Frequently Asked Questions (FAQ) about the Federal Deficit Reduction Act of 2005, developed by the Federal Government

State of New Jersey
Department of Human Services
Division of Medical Assistance & Health Services

NEWSLETTER

Volume 33 No. 02 **January 2023**

TO: All Providers - **For Action**
Managed Care Organizations (MCOs) – **For Action**

SUBJECT: Excluded, Unlicensed or Uncertified Individuals or Entities

This Newsletter Updates Newsletter Volume 26, Number 14, dated September 2016

PURPOSE: To remind providers and MCOs of their responsibility to determine if an individual or entity that they employ or contract with is excluded, unlicensed or uncertified.

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 inState or federally-funded health benefit programs, such as Medicaid, NJ FamilyCare, or Pharmaceutical Assistance to the Aged and Disabled (PAAD).

ACTION: Providers and MCOs are required to verify that any current or prospective employees (regular or temporary), contractors or subcontractors, who directly or indirectly will be furnishing, ordering, directing, managing or prescribing items or services in whole or in part are not excluded, unlicensed or uncertified by searching the following databases on a monthly basis:

- State of New Jersey debarment list (mandatory): **https://nj.gov/comptroller/doc/nj_debarment_list.pdf**
- Federal exclusions database (mandatory): **https://exclusions.oig.hhs.gov/**
- N.J. Treasurer's exclusions database (mandatory): **http://www.state.nj.us/treasury/revenue/debarment/debarsearch.shtml**
- N.J. Division of Consumer Affairs licensure databases, including all licensed healthcare professionals (mandatory, if applicable): **http://www.njconsumeraffairs.gov/Pages/verification.aspx**

- N.J. Department of Health licensure and certification database, including: Nursing Home Administrators, Certified Assisted Living Administrators, Certified Nurse Aides/Personal Care Assistants, and Certified Medication Aides (mandatory, if applicable): **https://njna.psiexams.com/.**
- Federal exclusions and licensure database (optional and fee-based): **https://www.npdb.hrsa.gov/hcorg/pds.jsp**. Please note that only certain providertypes may access this database.
  See **www.npdb.hrsa.gov/hcorg/register.jsp** formore information.

Background checks utilizing these databases shall be included in a provider's or MCO's written policies and procedures for preventing and detecting fraud, waste and abuse. The aforementioned requirements shall be mandatory for compliance with Section 6032 of the Federal Deficit Reduction Act, 42 U.S.C. §1396a(a)(68). The State reserves the right either to deny, void or to seek recovery for any 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. Further, interest and civil penalties may be assessed in any such recovery. Finally, providers and MCOs discovering any excluded, unlicensed or uncertified individual or entity employed by, or contracting with the provider or MCO must send written notification to the Office of the State Comptroller, Medicaid Fraud Division, P.O. Box 025, Trenton, NJ 08625-0025.

Additionally, if any provider or person discovers fraud and/or abuse occurring in any State or federally-funded health benefit program, they should report it to the Office of State Comptroller, Medicaid Fraud Division hotline at 1-888-937-2835 or web site at https://www.nj.gov/comptroller/about/work/medicaid/complaint.shtml.

If you have any questions concerning this Newsletter, please call the Recovery and Exclusions Supervisor, Office of the State Comptroller, Medicaid Fraud Division at 609-826-4856.

RETAIN THIS NEWSLETTER FOR FUTURE REFERENCE

State of New Jersey
Department of Human Services
Division of Medical Assistance & Health Services

NEWSLETTER

Volume 33 No. 03 **January 2023**

TO: All Providers and Other Entities **- For Action**
Health Maintenance Organizations **- For Action**

SUBJECT: Section 6032 of the Federal Deficit Reduction Act of 2005

EFFECTIVE: Immediately

This Newsletter Updates Newsletter Volume 18, Number 10, dated August 2008

PURPOSE: To remind providers and other entities about the requirements of Section 6032 of the Federal Deficit Reduction Act of 2005

BACKGROUND: As a condition of receiving Medicaid/NJ FamilyCare Title XIX payments, effective January 1, 2007, all "entities" (as defined in this newsletter) were required to complywith Section 6032 of the Federal Deficit Reduction Act of 2005 (referred to in this newsletter as "Section 6032"), if the total annual Title XIX payments received or made by the entity areat least $5,000,000, during the prior Federal fiscal year. If an entity furnishes items or services at more than a single location or under more than one contractual or other payment arrangement, the provisions of Section 6032 shall apply to the entity and to each of its components and locations if the aggregate Title XIX payments received or made by that entity meet the annual $5,000,000 threshold, regardless of whether the entity submits claims for payments using one or more provider identification or tax identification numbers. For purposes of Section 6032, an entity meets the $5,000,000 annual threshold based on Title XIX payments received or made during the previous Federal fiscal year. For example, as of January 1, 2007, an entity must comply with Section 6032 if it received or made Title XIX payments in that amount in Federal fiscal year2006 (i.e., October 1, 2005 – September 30, 2006).

For purposes of Section 6032, the term "entity" includes a governmental agency or facility, or any organization, unit, corporation, partnership, or other business arrangement (including any Medicaid managed care organization, irrespective of the form of business structure or arrangement by which it exists), whether for-profit or not-for-profit, which receives or makes payments, under a State Plan approved under Title XIX or under any waiver of such plan, that total at least $5,000,000 annually. A governmental component providing Medicaid health care items or services would qualify as an entity, e.g., a state, county or municipal health care facility, or a school district providing school-based health services.

A government agency which merely administers all or part of the Medicaid program (e.g., managing the claims processing system or determining beneficiary eligibility), or a governmental entity that oversees a component that has a provider number (e.g., a county that oversees a particular county facility) is not considered an entity for purposes of Section 6032.

ACTION: Entities covered by Section 6032 must establish written policies for all of their employees (including management), and for any contractor or agent of the entity, that provide detailedinformation about federal and state false claims laws. The information about these laws should include whistleblower protections under these laws, and the role of such laws in theprevention and detection of fraud, waste and abuse in Federal health care programs (including but not limited to Medicaid, Medicare, and the State Children's Health Insurance Program). In order to comply with this requirement in Section 6032,the following Federal and State statutes must be discussed in the written policies to be provided to all employees, including management, and to contractors or agents**:**

- Federal False Claims Act, 31 U.S.C. § 3729 – 3733
- Federal Program Fraud Civil Remedies Act, 31 U.S.C. § 3801 – 3812
- New Jersey Medical Assistance and Health Services Act – Criminal Penalties, N.J.S. 30:4D-17(a) – (d)
- New Jersey Medical Assistance and Health Services Act – Civil Remedies, N.J.S. 30:4D-7.h.; N.J.S. 30:4D-17(e) – (i); N.J.S. 30:4D-17.1.a.
- New Jersey Health Care Claims Fraud Act, N.J.S. 2C:21-4.2 and 4.3; N.J.S. 2C:51-5
- New Jersey Conscientious Employee Protection Act, N.J.S. 34:19-1 et seq.
- New Jersey False Claims Act, N.J.S. 2A:32C-1 et seq.
- New Jersey Insurance Fraud Prevention Act, N.J.S. 17:33-1 et seq.

Entities covered by Section 6032 must include as part of such written policies detailed provisions regarding their own policies and procedures for detecting and preventing fraud, waste and abuse, including but not limited to internal/external audits and monitoring and a Compliance Plan and/or committee. These policies must include the following reporting methods, in addition to the entity's internal reporting mechanism:

- New Jersey Medicaid Fraud Division at 888-937-2835 or https://www.nj.gov/comptroller/about/work/medicaid/complaint.shtml; and

- New Jersey Insurance Fraud Prosecutor Hotline at 877-55-FRAUD or https://njinsurancefraud2.org/#report.

In addition, entities covered by Section 6032 must perform monthly exclusions, certification and licensure checks as required by the New Jersey Division of Medical Assistance and Health Services Newsletter Volume 33, Number 2, including:

- State of New Jersey debarment list (mandatory): https://nj.gov/comptroller/doc/nj_debarment_list.pdf

- Federal exclusions database (mandatory): https://exclusions.oig.hhs.gov/

- N.J. Treasurer's exclusions database (mandatory): http://www.state.nj.us/treasury/revenue/debarment/debarsearch.shtml

- N.J. Division of Consumer Affairs licensure databases, including all licensed healthcare professionals (mandatory, if applicable): http://www.njconsumeraffairs.gov/Pages/verification.aspx

- N.J. Department of Health licensure and certification database, including:, Nursing Home Administrators, Certified Assisted Living Administrators, Certified Nurse Aides/Personal Care Assistants, and Certified Medication Aides (mandatory, if applicable): https://njna.psiexams.com/.

- Federal exclusions and licensure database (optional and fee-based): https://www.npdb.hrsa.gov/hcorg/pds.jsp. Please note that only certain provider types may access this database. See www.npdb.hrsa.gov/hcorg/register.jsp for more information.

The entity also shall include in any employee handbook a specific discussion of the laws mentioned above, the rights of employees to be protected as whistleblowers, and the policiesand procedures of the entity for detecting and preventing fraud, waste and abuse. However,there is no requirement that an employee handbook be created by the entity if none alreadyexists.

On an annual basis, entities covered by Section 6032 are required to disseminate these written policies and makethem readily available to all of their employees, including management, and to theircontractors and agents. In addition, entities must, either by contract or otherwise: (1) requirethat their contractors and agents comply with these policies; and (2) request that their contractors and agents disseminate these policies and make them readily available to theiremployees and managers. For purposes of Section 6032, a "contractor" or "agent" includesany contractor, subcontractor, agent or other person which or who, on behalf of the entity, furnishes, or otherwise authorizes the furnishing of Medicaid health care items or services, performs billing or coding functions, or is involved in monitoring of health care provided by theentity. The phrase "Medicaid health care items or services" in the previous sentence meansonly those Title XIX items or services that are directly related to patient care, and does not include food, fuel, landscaping and other items or services that are not directly related to patient care. Please note that it is possible that a provider may have to comply with Section6032 in different capacities. For example, a provider might be both an "entity" in a fee-for-service context and a "contractor" in a managed care setting.

Additional guidance may be found in the State Medicaid Director Letter from the Centersfor Medicare & Medicaid Services (CMS) dated December 13, 2006, which can be accessed at http://www.cms.hhs.gov/smdl/downloads/SMD121306.pdf, as well as the CMS-produced list of questions and answers dated March 20, 2007, which is available at www.cms.hhs.gov/smdl/downloads/SMD032207Att1.pdf.

The Office of State Comptroller, Medicaid Fraud Division will be monitoring compliance with Section 6032 on behalf of the Division of Medical Assistance and Health Services (DMAHS). As part of this monitoring, providers and entities subject to Section 6032 have been required to complete a form certifying their compliance with Section 6032 for each calendar year, since 2007. In addition, a sample of providers are asked to submit documentation to support each of their answers. Furthermore, onsite reviews may be conducted to further verify compliance with Section 6032. Finally, CMS may independently determine compliance with Section 6032 through audits of entities or other means.

Any evidence of fraud, waste, or abuse in Medicaid, NJ FamilyCare, General Assistance and other programs funded in whole or in part by the State can be reported to the toll-free health care Fraud and Abuse Hotline at 1-888-9-FRAUD-5 (1-888-937-2835).

Any evidence of fraud, waste or abuse in Medicare or any other health care program involving only Federal funds can be reported to the toll-free hotline established by the federal Office of Inspector General in the U.S. Department of Health and Human Services at 1-800-HHS-TIPS (1-800-447-8477).

Any questions about Section 6032 should be directed to: Section6032@osc.nj.gov.

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