

**DEPARTMENT OF HUMAN SERVICES  
DIVISION OF DEVELOPMENTAL DISABILITIES**

**EFFECTIVE DATE: November 19, 2008**

**DATE ISSUED: November 19, 2008  
(Rescinds Division Circular #54 issued on October 10, 2007)**

**I. TITLE: FEDERAL DEFICIT REDUCTION ACT OF 2005, Section 6032  
Policy on Fraud, Waste and Abuse**

**II. PURPOSE:** The purpose of this circular is to establish policies and procedures for all employees and contractors or agents in regard to the Deficit Reduction Act of 2005 and to provide detailed information about the federal and State laws on false claims; fraud, waste and abuse; and whistleblower protections to prevent and detect fraud, waste and abuse in Medicaid and other federally funded programs.

**III. SCOPE:** This circular applies to the Division of Developmental Disabilities' developmental centers and Community Care Waiver services program, in their capacity as Medicaid providers, and all contracted providers of DDD.

**IV. POLICY:**

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. It is the policy of the Division of Developmental Disabilities (DDD) to be in compliance with the federal and state laws and regulations related to the Deficit Reduction Act, the federal False Claims Act, the federal Program Fraud Civil Remedies Act, New Jersey's Medical Assistance and Health Services Act, New Jersey's Health Care Claims Fraud Act, the New Jersey Conscientious Employee Protection Act, and the New Jersey False Claims Act.

**V. GENERAL STANDARDS:**

**A.** The Deficit Reduction Act provides that:

1. 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;

2. Include as part of the written policies, detailed provisions regarding the entity's policies and procedures for detecting and preventing fraud, waste, and abuse, and;
3. 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.
4. Under Section 6032, the DDD contracted providers must establish and make available to their employees, and to their contractors and agents, policies that explain:
  - (a) the federal and New Jersey laws that deal with false claims in Medicaid, Medicare and other federally funded health care programs; and
  - (b) the policies and procedures that the DDD contracted providers have in place to detect and prevent fraud, waste and abuse in these programs.
5. The contractors and agents that do business with DDD contracted providers must then adopt policies and make them available to their employees.
6. DDD components are required to post information on how employees may report Medicaid fraud, waste or abuse. A poster is appended to this circular that is to be posted in employee common areas.

**B. Definitions:**

For purposes of this circular, the following terms shall have the meaning defined herein:

“Claim” means any request or demand for money that is submitted to the federal government or its contractors.

“Contractor or agent” means any contractor, subcontractor, or agent, or other person which or who, on behalf of DDD, furnishes, or otherwise authorizes the furnishing of Medicaid health care items or services, including the DDD Community Care Waiver and developmental centers,

performs billing or coding functions, or is involved in monitoring of health care provided by the Division.

“Knowing and/or knowingly” means that a person, with respect to the information has actual knowledge of the information; acts in a deliberate ignorance of the truth or falsity of the information; or acts in reckless disregard of the truth or falsity of the information; no proof of specific intent to defraud is required.

**C. Procedure for Reporting Fraud, Waste or Abuse:**

1. If you are an employee at DHS, DDD, or an employee of a contractor or agent of DHS, DDD 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 just state funds, you can do one of the following in addition to the current procedures that you follow:
  - a. 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 report your concerns to your supervisor. Your supervisor will then report this up the chain of command to be forwarded to the DDD Compliance Officer for review and appropriate action. Your supervisor(s) will keep your name confidential if you wish.
  - b. 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.
  - c. 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>.
2. 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).

- a. If you are a “whistleblower”, you can also file a lawsuit called a “qui tam action” in federal court under a federal law known as the “Federal False Claims Act”. You can also file such an action in either federal or State court under the New Jersey False Claims Act. These laws also protect you from punishment or other retaliation, and if you are successful, you might get a share of the recovery. These laws are described in more detail in section V.D. of this circular.

#### **D. Information on Relevant Federal and State Statutes**

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 currently is not less than \$5,500 and not more than \$11,000 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.

#### **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. Current civil penalties are \$5,500 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. 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. 30:4D-7.h., N.J.S. 30:4D-17(e)-(i); N.J.S. 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 V.D.8, below, a penalty (which was increased from \$2,000 to \$5,500 to \$11,000) 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. Health Care Claims Fraud Act  
N.J.S. 2C:21-4.2 & 4.3; N.J.S. 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. Conscientious Employee Protection Act, “Whistleblower Act”, N.J.S.A. 34:19-4**

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 were increased from to \$2,000 per false or fraudulent claim to the federal level which is currently \$5,500 to \$11,000 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.

**E. Websites for Obtaining Additional Information:**

- Deficit Reduction Act – Public Law 109-171  
[www.gpoaccess.gov/plaws/index.html](http://www.gpoaccess.gov/plaws/index.html)  
(insert public law 109-171 in the quick search box)
- New Jersey Statutes  
[www.njleg.state.nj.us](http://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/>



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Kenneth W. Ritchey  
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# STOP MEDICAID FRAUD WASTE AND ABUSE

## \*\*YOU CAN HELP STOP MEDICAID FRAUD, WASTE AND ABUSE\*\*

### Examples of Medicaid Fraud and Waste include:

- Providing unnecessary services.
- Billing for medical services not actually performed.
- Billing for unnecessary services.
- Billing more than once for the same service.
- Billing separately for services that legitimately should be one billing.
- Dispensing generic drugs but billing for brand-name drugs.
- Giving or accepting something of value (kickbacks), such as cash, gifts, or services, in return for medical services.
- Falsifying cost reports or claims.

### Examples of Medicaid Abuse include:

- When someone lies about their medical condition.
- When someone lies about their eligibility.
- When someone forges prescriptions.
- When someone loans their Medicaid card to others.

If you suspect fraud, waste or abuse,  
call Toll Free:

1-888-9FRAUD5 (1-888-937-2835)

State of New Jersey

Department of Human Services