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| Corresponding TJC Standard(s): | Origination and Revision Dates: 10/19/2015, 3/9/2021, 7/10/2023 |
| Other Authority: Federal False Claims Act (“FCA”) (31 U.S.C. 3729-3733) Program Fraud Civil Remedies Act (“PFCRA”) (31 U.S.C. 3801-3812) New Jersey False Claims Act (“NJFCA”)(N.J.S.A. 2A:32C-1 to -18) New Jersey Medical Assistance and Health Services Act (“NJMAHSA”) (N.J.S.A. 30:4D-1 to -19.5) New Jersey Health Care Claims Fraud Act (“NJHCCFA”) (N.J.S.A. 2C:21-4.2, 4.3; 2C:51-5) New Jersey Insurance Fraud Prevention Act (NJSA 17:33A-1 et seq.) Conscientious Employee Protection Act, N.J.S. 34:19-1 et seq. Federal Deficit Reduction Act of 2005, Section 6032 (42 U.S.C. 1396(a)(68)) | Review Dates: 2019, 2023, 3/2024 |
| | Responsible Dept: Compliance |

**FRAUD DETECTION & RESPONSE, FALSE CLAIMS
 LIABILITY AND ANTI-RETALIATION PROTECTION**

PURPOSE

To satisfy the requirements of Section 6032 of the Deficit Reduction Act of 2005 as well as various state regulations by setting forth required information concerning: (1) the federal False Claims Act and other laws pertaining to civil and criminal penalties for false claims; (2) protections against reprisal or retaliation for those who report wrongdoing; and (3) Matheny School and Hospital procedures to detect and prevent fraud, waste and abuse.

SCOPE

This policy applies to the approach by all directors, officers, administrators, managers, non-management staff, contractors and agents of Matheny School and Hospital, to compliance with federal and state laws prohibiting the submission of false or misleading claims to any government agency or payer source (e.g., Medicare, Medicaid, etc.).



GENERAL POLICY

It is the policy of Matheny School and Hospital to obey all federal and state laws and to implement and enforce procedures to detect and prevent fraudulent or misleading claims to any government agency or payer.

DISTRIBUTION

This policy shall be distributed to all current Board members, officers, administrators, managers, and staff. This policy is made available on <https://matheny.org/>

EXPLANATION OF LAWS

Set forth below are summaries of certain statutes that provide liability for false claims and statements. These summaries are not intended to identify all applicable laws but rather to outline some of the major statutory provisions as required by the Deficit Reduction Act of 2005.

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

- A. 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:
 1. Knowingly presenting, or causing to be presented to the Government a false claim for payment;
 2. 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;
 3. Conspiring to defraud the Government by getting a false claim allowed or paid;
 4. Falsely certifying the type or amount of property to be used by the Government;
 5. Certifying receipt of property on a document without completely knowing that the information is true;
 6. Knowingly buying Government property from an unauthorized officer of the Government, and;
 7. 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.
- B. 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 (January 30, 2023) is not less than \$13,508 and not more than \$27,018 per false claim, plus three times the amount of damages sustained by the federal government. See 28 C.F.R. 85.5 for the current rate.
- C. 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 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 from \$13,508 (January 30, 2023) 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. See 28 C.F.R. 85.5 for the current rate.

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 \$15,000, imprisonment for up to 5 years, or both; (b) false claims, statements or omissions, or conversion of benefits or payments: fine of up to \$15,000, imprisonment for up to 5 years, or both; (c) kickbacks, rebates and bribes: fine of up to \$15,000, imprisonment for up to 5 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 \$10,000, or imprisonment for up to 18 months, or both. Authorized sentencing dispositions may be found at N.J.S.A. 2C:43-2 and 43-6.

Criminal prosecutions are generally handled by the Medicaid Fraud Control Unit within the Office of Insurance Fraud Prosecutor, in the Office of the Attorney General.

4. 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, a penalty not to exceed the amount of civil penalty under the Federal False Claims Act, and an additional penalty between \$10,000 and \$25,000. Recovery actions are generally pursued administratively by the Medicaid Fraud Division in the New Jersey Office of the State Comptroller and can be obtained against any individual or entity responsible for, in receipt of, or in 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 Control Unit within the Office of the Attorney General.

5. 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.

6. 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 advertised fraudulently in any manner.”

7. 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.

8. 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.

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.

9. 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 currently \$5,000 and not more than \$10,000 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.

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

The purpose of this act is to confront aggressively 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.

Detecting and Responding to Fraud

Matheny School and Hospital's policies and procedures for detecting and preventing fraud are incorporated into the Corporate Compliance program. This program is based on specific "model program" guidance provided by the US Department of Health and Human Services' Office of Inspector General (OIG), in accordance with the Matheny School and Hospital Code of Conduct, employees are encouraged to bring to management's attention any potential violations of its Compliance program and any governmental laws including those referenced above.

- Questions concerning compliance may be directed to an immediate supervisor, department director, the Human Resources Department or the Corporate Compliance



Officer. In addition: by calling the Corporate Compliance Hotline at **1-877-631-0014**, going to <https://matheny.ethicspoint.com> or texting **#compliance** from internal account

Websites for Obtaining Additional Information:

- Deficit Reduction Act – Public Law 109-171 <https://www.govinfo.gov/app/details/PLAW-109publ171/summary> (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/>

You may also call the following numbers:

- New Jersey Medicaid Fraud and Abuse Hotline: Toll Free 1-888-937-2835
<http://nj.gov/comptroller/divisions/medicaid/>
- Centers for Medicare and Medicaid Services: 1-800-447-8477.
- Employees receive information concerning compliance upon orientation, annual education, and monthly newsletter – and in the Code of Conduct booklet.

New Jersey Insurance Fraud Prevention Act

- Reporting methods include the New Jersey Medicaid Fraud Division at 888-937-2835 or <https://www.nj.gov/oag/medicaidfraud/report.html#a> and
- New Jersey Insurance Fraud Prosecutor Hotline at 877-55-FRAUD or <https://www.njoag.gov/about/divisions-and-offices/office-of-the-insurance-fraud-prosecutor-home/fight-fraud-its-a-crime/>