

Policy: COMPLIANCE WITH APPLICABLE FEDERAL AND STATE ANTI-FRAUD AND FALSE CLAIMS LAWS

Type: CORPORATE COMPLIANCE POLICY and PROCEDURE

Applicable to: All RWJBarnabas Health Facilities and Medical Groups, including but not limited to: Clara Maass Medical Center, Community Medical Center, Cooperman Barnabas Medical Center, Jersey City Medical Center, Monmouth Medical Center, Monmouth Medical Center Southern Campus, Newark Beth Israel Medical Center, RWJUH-Hamilton, RWJUH-New Brunswick, RWJUH-Rahway, RWJUH-Somerset, Trinitas Regional Medical Center, Barnabas Health Ambulatory Care Center, Barnabas Health Behavioral Health Center, Children's Hospital of NJ at Newark Beth Israel Medical Center, Children's Specialized Hospital, The Bristol-Myers Squibb Children's Hospital at Robert Wood Johnson University Hospital, The Unterberg Children's Hospital at Monmouth Medical Center, Qualitas Pharmacy Services, Medical Group of RWJBarnabas Health and Rutgers Health, and such other facilities or parties as may be required by a contract or agreement with RWJBarnabas Health.

Policy owner: RWJBH Corporate Compliance Department

Effective date: September 2, 2008; *Revised:* September 2008, September 2012, February 2017, March 2018, January 2021, January 2022, April 2022, June 2022; August 2022

Approved by: Rowena C. Spigarelli, Chief Compliance Officer; Ami Sparano, Vice President Compliance

Accountable for: Chief Compliance Officer; Vice President Compliance

PURPOSE:

To satisfy the requirements of Section 6032 of the Deficit Reduction Act of 2005 (DRA) by setting forth certain federal and state laws relating to liability for false claims and statements; administrative remedies found in the Program Fraud Civil Remedies Act; protections against reprisal or retaliation for those who report wrongdoing; and RWJBarnabas Health's policies and procedures to detect and prevent fraud, waste and abuse.

DEFINITIONS:

Deficit Reduction Act of 2005 (DRA): A Federal law, which requires a policy to describe the provisions of certain Federal and State anti-fraud and false claim statutes.

Federal Anti-Fraud and False Claims Laws: Set forth below are summaries of certain federal laws 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 DRA.

- Federal False Claims Act (FCA)
- The Program Fraud Civil Remedies Act (PFCRA)
- Whistleblower protection under such laws

State Anti-Fraud and False Claims Laws:

Set forth below are summaries of certain state laws 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 DRA of 2005.

- The New Jersey False Claims Act
- The New Jersey Insurance Fraud Prevention Act
- The Medical Assistance and Health Services Act
- Health Care Claims Fraud
- False Claim for Payment of a Government Contract
- The New Jersey Conscientious Employee Protection Act (CEPA)

POLICY:

It is RWJBarnabas Health's policy that all Board members, employees, physicians, vendors and contractors and such other parties, as required by the DRA and regulations promulgated thereunder shall comply with all applicable Federal and New Jersey State anti-fraud and false claims laws and regulations. RWJBarnabas Health has instituted various procedures to ensure compliance with these laws and to assist RWJBarnabas Health in preventing fraud, waste and abuse in Federal health care programs. As part of the RWJBarnabas Health Compliance Program, the above shall be incorporated into the Employee Handbook and distributed to all employees and such other parties as required by the DRA and regulations promulgated thereunder.

I. FEDERAL ANTI-FRAUD AND FALSE CLAIMS LAWS

A. The Federal False Claims Act.

The FCA is a law that prohibits a person or entity, such as RWJBarnabas Health from "knowingly" presenting or causing to be presented a false or fraudulent claim for payment or approval to the Federal government, and from "knowingly" making, using or causing to be made a false record or statement to get a false or fraudulent claim paid or approved by the Federal government. The Act also prohibits a person or entity from conspiring to defraud the government by getting a false or fraudulent claim allowed or paid. These prohibitions extend to claims submitted to Federal health care programs, such as Medicare.

The FCA broadly defines the terms “knowing” and “knowingly.” Specifically, knowledge will have been proven under the FCA if the person or entity: (1) has actual knowledge of the information; (2) acts in deliberate ignorance of the truth or falsity of the information; or (3) acts in reckless disregard of the truth or falsity of the information. The law specifically provides that a specific intent to defraud is not required to prove a violation.

A person or entity found guilty of violating this law will be liable for a civil penalty from \$11,665 to \$23,331 for each violation of the Act, plus three times the amount of actual damages the government sustained as a result of the conduct. In addition to being liable for damages and civil penalties, violating the FCA can provide the basis to subject a person or entity to exclusion from participation in Federal health care programs, such as Medicare and Medicaid.

B. Whistleblower Protections

Private persons are permitted to bring civil actions for violations of the FCA on behalf of the United States (also known as “qui tam” actions) and are entitled to receive a percentage of monies collected. Persons bringing these claims (also known as “relators” or “whistleblowers”) are granted protection under the law. Specifically, any whistleblower who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against by his or her employer because of reporting violations of the FCA will be entitled to reinstatement with seniority, double back pay, interest, special damages sustained as a result of discriminatory treatment, and attorney’s fees and costs.

C. The Program Fraud Civil Remedies Act (“PFCRA”)

This Federal law makes it illegal for a person or entity to make, present or submit (or cause to be made, presented or submitted) a “claim” (i.e., a request, demand or submission) for property, services, or money to an “authority” (i.e., an executive department of the Federal Government, e.g., the U.S. Department of Health and Human Services, which oversees Medicare and Medicaid programs) when the person or entity “knows or has reason to know” that the claim: (1) is false, fictitious or fraudulent; or (2) includes or is supported by any written statement which asserts a material fact which is false, fictitious or fraudulent; or (3) includes or is supported by any written statement which omits a material fact, is false, fictitious or fraudulent because of the omission and is a statement in which the person or entity has a duty to include such material fact; or (4) is for the provision of items or services which the person or entity has not provided as claimed.

In addition, it is illegal to make present or submit (or cause to be made, presented, or submitted) a written “statement” (i.e., a representation, certification, affirmation, document, record, or accounting or bookkeeping entry made with respect to a claim or to obtain the approval or payment of a claim) if the person or entity “knows or has reason to know” such statement (1) asserts a material fact which is false, fictitious or fraudulent or (2) omits a material fact making the statement false, fictitious or fraudulent because of the omission.

Similar to the FCA, the PFCRA broadly defines the terms “knows or has reason to know” as (1) having actual knowledge that the claim or statement is false, fictitious or fraudulent; (2) acting in deliberate ignorance of the truth or falsity of the claim or statement; or (3) acting in reckless disregard of the truth or falsity of the claim or statement. The law specifically provides that a specific intent to defraud is not required to prove that the law has been violated. The PFCRA provides for civil penalties of up to for each false claim paid by the government, and, in certain circumstances, an assessment of twice the amount of each claim.

In addition, if a written statement omits a material fact and is false, fictitious or fraudulent because of the omission and is a statement in which the person or entity has a duty to include such material fact and the statement contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement, the law provides for a penalty of up to \$11,665¹ to be imposed for each such statement.

II. NEW JERSEY STATE ANTI-FRAUD AND FALSE CLAIMS LAWS

A. The New Jersey False Claims Act

The New Jersey False Claims Act is a State law that prohibits, among other things, knowingly presenting or causing 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, or knowingly making, using, or causing to be made or used a false record or statement to get a false or fraudulent claim paid or approved by the State. The New Jersey False Claims Act also prohibits conspiring to defraud the State by getting a false or fraudulent claim approved or paid by the State.

The New Jersey False Claims Act defines “knowingly” as having actual knowledge of the information; acting in deliberate ignorance of the truth or falsity of the information; or acting in reckless disregard of the truth or falsity of the information. No proof of specific intent to defraud is required. Acts occurring by innocent mistake or as a result of mere negligence will be a defense to an action under the New Jersey False Claims Act.

A person who has violated the New Jersey False Claims Act will be jointly and severally liable to the State for a civil penalty of not less than and not more than the civil penalty allowed under the Federal False Claims Act, for each false or fraudulent claim, plus three times the amount of damages which the State sustains (i.e., treble damages). The court may reduce the treble damages to not less than twice the amount of damages which the State sustains if the court finds that certain factors are met.

¹ Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (“2015 Act”), the FCA and PFCRA civil penalties were adjusted for inflation in 2020 and these adjustments are reflected in this policy. The 2015 Act also requires annual adjustments to federal civil penalties based on inflation and therefore, the amount of the penalties may be higher than the amounts listed here due to the annual increase.

Violations of the New Jersey False Claims Act also give rise to liability under the Medical Assistance and Health Services Act (see below), N.J.S.A. 30:4D-17. Specifically, any person, firm, corporation, partnership, or other legal entity who violates the provisions of the New Jersey False Claims Act will, in addition to other penalties provided by law, including potential exclusion and/or sanction from the Medicaid program, be liable for civil penalties of (1) payment of interest on the amount of the excess benefits or payments at the maximum legal rate in effect on the date the payment was made to said person, firm, corporation, partnership or other legal entity for the period from the date upon which payment was made to the date upon which repayment is made to the State; (2) payment of an amount not to exceed three-fold the amount of such excess benefits or payments; and (3) payment in the sum of not less than and not more than the civil penalty allowed under the Federal False Claims Act for each excessive claim for assistance, benefits or payments.

B. Whistleblower Provisions and Protections under the New Jersey False Claims Act

A person may bring a civil action for a violation of the New Jersey False Claims Act for the person and for the State. The person also must serve the State Attorney General. If the State Attorney General proceeds with and prevails in an action brought by an individual under the New Jersey False Claims Act, the individual is entitled to at least 15% but not more than 25% of the proceeds recovered under any judgment or any proceeds of any settlement, depending on the extent of the individual's involvement. If the State Attorney General does not proceed with an action, the individual will receive an amount which the court decides is reasonable, which will be between 25% and 30% of the proceeds of the action or settlement of a claim.

An employee who is discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under the New Jersey False Claims Act, including preliminary investigation, may be entitled to special protection. The protection afforded may include reinstatement with the same seniority status such employee would have had, but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees.

C. The New Jersey Insurance Fraud Prevention Act

This law makes it unlawful to (1) present or cause to be presented (including the assisting, conspiring or urging of another to present) 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 knowing the statement contains false or misleading information concerning any fact or thing material to the claim or (2) conceal or knowingly fail to disclose the occurrence of an event which affects any person's initial or continued right or entitlement to any insurance

benefit of payment or the amount of any benefit or payment to which the person is entitled. A violation of this law can subject a person or entity, such as RWJBarnabas Health Corporation to civil damages equal to three times the amount of damages; penalties of \$5,000 for the first offense, \$10,000 for the second offense and \$15,000 for each subsequent offense; and a surcharge paid to the State of \$1,000 or five percent (5%) of an out-of-court settlement. Furthermore, a health care professional in violation of this law risks potential loss of his/her professional license as one of the penalties under this Act. Additionally, the Act authorizes the Attorney General to pursue additional criminal penalties.

D. The Medical Assistance and Health Services Act

Provisions in this comprehensive law allow for the imposition of criminal fines (up to \$10,000) and terms of imprisonment (up to three years) for various violations involving the submission of claims for payment under the Medical Assistance Program. For instance, such criminal penalties may be imposed upon a health care provider who willfully receives Medical Assistance payments to which the provider is either not entitled or that are in a greater amount than that to which the provider is entitled. The law also allows penalties to be imposed upon an individual or an entity, such as RWJBarnabas Health that: (1) knowingly and willfully makes or causes to be made any false statement or false representation of a material fact in any claim form in order to receive payment; (2) knowingly and willfully makes or causes to be made any written or oral false statement for use in determining such payment; or (3) conceals or fails to disclose the occurrence of an event which affects the right to receive such a payment. Penalties may also be imposed if false statements or representations of a material fact are made in connection with the conditions or operations of any institution, such as Barnabas Health Corporation during an initial or recertification process entitling the facility to payments under the Medical Assistance Program. In addition to potential exclusion from the Medicaid program, criminal fines and jail sentences mentioned above, violators of this Act are also subject to civil penalties, which can include treble damages, interest on the overpayments, and not less than and not more than the civil penalty allowed under the Federal False Claims Act for each false claim submitted.

E. Health Care Claims Fraud Act

The crime of Health Care Claims Fraud is committed when a false, fictitious or fraudulent or misleading statement of material fact is knowingly or recklessly submitted (or is attempted to be submitted) or a material fact is omitted from any record, bill, claim or other documents in connection with payment or reimbursement for health care services by either a licensed health care practitioner or an unlicensed person. The penalty is a fine of up to five times the monetary amount obtained or sought.

F. False Claim for Payment of a Government Contract

Another New Jersey state statute makes it a crime to: (1) knowingly submit to the government any claim for payment for performance of a government contract knowing that

the claim is false, fictitious or fraudulent; and (2) knowingly make a material representation that is false in connection with the negotiation, award or performance of a government contract. The criminal penalties for violations of this statute vary from a crime in the fourth degree to a crime in the second degree depending on the amount of the claim.

G. Whistleblower Protections

Under CEPA, employers are prevented from taking any retaliatory actions against an employee who discloses (or threatens to disclose) to a supervisor or a public body any activity, policy, or practice of the employer that the employee reasonably believes is fraudulent or criminal and that may defraud a patient or governmental entity, among others. In addition, the Act protects employees who object or refuse to participate in such activity, policy or practice. Specific protection is also given to licensed or certified health care professionals who object to or refuse to participate in an activity, policy or practice that the employee reasonably believes constitutes improper quality of care.

QUALIFICATIONS: All Board members, employees, physicians, vendors and contractors, and other such parties as required by the DRA and regulations promulgated thereunder.

PROCEDURE:

1. RWJBarnabas Health makes available the policy and procedure, "Compliance with Applicable Federal and State Anti-Fraud and False Claim Laws" to all Board members, employees, physicians, vendors and contractors, and other such parties as required by the DRA and regulations promulgated thereafter.
2. The RWJBarnabas Health Corporate Compliance Program provides information on the standards to comply with DRA through the Code of Conduct. Board members, employees, physicians, vendors and contractors and such other parties are required to report questions and concerns through the Corporate Compliance Department or through the Compliance Helpline at 800-780-1140 or rwjbarnabashealth.ethicspoint.com.
3. Board members, employees, physicians, vendors and contractors and such other parties can contact the New Jersey Medicaid Fraud Division at 888-937-2835 or <https://www.nj.gov/comptroller/about/work/medicaid/complaint.shtml> or the New Jersey Insurance Fraud Prosecutor Hotline at 877-55-FRAUD or <https://njinsurancefraud2.org/#report>, to report any violations as described in this policy.

RELATED DOCUMENTS:

RWJBarnabas Health Employee Handbook:

<https://thebridge.rwjbh.org/Resource.ashx?sn=RWJBH-EmployeeHandbook>

RWJBarnabas Health Code of Conduct:

<https://thebridge.rwjbh.org/Resource.ashx?sn=CodeofConduct1>

Regulatory references:

Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (28 U.S.C. 2461)

Deficit Reduction Act of 2005 PUBLIC LAW 109 - 171 - DEFICIT REDUCTION ACT OF 2005

Federal False Claims Act (31 U.S.C. 3729-3733)

Federal Program Fraud Civil Remedies Act (31 U.S.C 3801-3812)

The New Jersey Insurance Fraud Prevention Act (N.J.S.A 17:33A-1 et seq.)

The New Jersey Medical Assistance and Health Services Act – (Criminal Penalties, N.J.S.A. 30:4D-17(a)-(d) & Civil Remedies, N.J.S.A.30:4D-7.h., N.J.S. 30:4D-17(e)-(i); N.J.S.A. 30:4D-17.1.a)

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

False Claim for Payment of a Government Contract (N.J.S. 2C:21-34b)

The New Jersey Conscientious Employee Protection Act “Whistleblower Act” (N.J.S.A 34:19-1)

The New Jersey False Claims Act (N.J.S.A. 2A; 32C-1 et. Seq.)