



NEW JERSEY STATE SUPPLEMENT TO THE FALSE CLAIMS PREVENTION POLICY

A. *New Jersey False Claims Act [N.J.S.A. 2A:32C-1–2A:32C-17 and N.J.S.A. 30:4D-17(e)]*

The New Jersey False Claims Act (“NJFCA”) has similar provisions to the federal False Claims Act and is a state law that creates liability for any person who knowingly presents or causes to be presented a false or fraudulent claim to the State of New Jersey, or any contractor, grantee or other recipient of state funds, for payment from any state funded contract or program.

The NJFCA prohibits retaliation by the Company against any Associate for the disclosure of information regarding this law; thus, the Company shall not discharge, demote, suspend, threaten, harass, deny promotion to, or in any other manner discriminate against an Associate in the terms and conditions of employment because of the Associate’s good faith report to the State or law enforcement agency.

Remedies for retaliation include making an Associate “whole” by reinstating him/her, paying him/her two times the amount of back pay, interest on the back pay, compensation for any special damage sustained as a result of the discrimination, including litigation costs and reasonable attorneys’ fees, and, where appropriate, punitive damages.

Under the NJFCA, no employer shall make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a State or law enforcement agency or from acting to further a false claims action, including investigating, initiating, testifying, or assisting in an action filed or to be filed under this Act.

Health care providers and suppliers who violate the NJFCA can be subject to civil monetary penalties ranging from \$5,500 to \$11,000 for each false claim submitted.

Violations of the NJFCA can also give rise to liability under the New Jersey Medical Assistance and Health Services Act (see below).

B. *New Jersey Medical Assistance and Health Services Act [N.J.S.A. 30:4D-1 et seq.]*

The New Jersey Medical Assistance and Health Services Act at *N.J.S.A. 30:4D-17*, makes it a crime for:

- any person to willfully obtain benefits to which he or she is not entitled and any provider to willfully receive payments to which the provider is not entitled, and;
- a person, entity, or provider to:
 - knowingly and willfully make or cause to be made a false statement or representation of a material fact in any cost study, claim form, or document necessary to apply for or receive a benefit or payment under the NJMAHSA, or;
 - knowingly and willfully make or cause to be made a false statement of material fact for use in determining rights to such benefit or payment, or;
 - conceal or fail to disclose the occurrence of an event that affects the initial or continued right to any such benefit or payment with an intent to fraudulently secure benefits or payments not authorized under the NJMAHSA, or;
 - knowingly and willfully convert benefits or payments to a use other than for which they were received.

A conviction carries a penalty of up to \$10,000 for the first and each subsequent offense and/or imprisonment for up to three (3) years.

In addition, any person, entity or provider who solicits, offers or receives any kickback, rebate or bribe in connection with the furnishing of items or services for which payment may be made or whose cost may be reported in order to obtain or in connection with the receipt of benefits/payments under the NJMAHSA, will be liable for a penalty of up to \$10,000 and/or up to three (3) years imprisonment.



Whomever knowingly and willfully makes, causes to be made or induces or seeks to induce the making of a false statement of material fact with respect to conditions or operations of Spring Hills so that Spring Hills may qualify as a hospital, skilled nursing facility, intermediate care facility or health agency will be guilty of a high misdemeanor and will be liable for a penalty of up to \$3,000 and/or up to one (1) year in prison.

Any person, entity or provider who violates any of the above provisions will also be liable for civil penalties of interest at the maximum legal rate on the benefits or payments, an amount of up to three times the amount of the benefits; and an amount equal to the civil money penalties provided for under the Federal False Claims Act, currently between \$5,500 and \$11,000 per improper claim for benefits or payment.

In addition to the criminal penalties referenced above, any person, entity or provider who, without intent to violate the NJMAHSA, obtains benefits or payments in excess of the entitled amount, may be liable for a civil penalty of the payment of interest on the excess benefits or payments at the maximum legal rate. A provider or person participating in a benefit program or acting as an agent, team member or independent contractor of a provider may be suspended, debarred or disqualified for good cause. *N.J.S.A 30:4D-17.1*

C. New Jersey Health Care Claims Fraud Act [N.J.S.A. 2C:21-4.2 and 4.3; N.J.S.A. 2C:51-5]

The New Jersey Health Care Claims Fraud Act (“NJHCCFA”) makes it a crime to submit false, fictitious, fraudulent or misleading statements of material fact in any document in connection with payment or reimbursement under a state-funded healthcare program. The law provides for the following criminal penalties:

- a second degree crime for any “practitioner” to knowingly commit health care claims fraud in the course of providing professional services, and
- a third degree crime for any “practitioner” to recklessly commit health care claims fraud in the course of providing professional services.

The NJHCCFA further makes it a third degree crime for non-practitioners to knowingly commit health care claims fraud, a second degree crime for non-practitioners to knowingly commit five or more acts of health care claims fraud if the aggregate pecuniary benefit obtained or sought is \$1,000 or more, a fourth degree crime for non-practitioners to recklessly commit health care claims fraud.

The law defines “health care claims fraud” broadly as:

Making or causing to be made, a false, fictitious, fraudulent, or misleading statement of material fact in, or omitting a material fact from, or causing a material fact to be omitted from, any record, bill claim or other document, in writing, electronically or in any other form, that a person attempts to submit, submits, causes to be submitted, or attempts to cause to be submitted for payment or reimbursement for health care services.

A person convicted under this statute may also be subject to a fine of up to \$150,000 or five times the amount of damages for each false claim. Additionally, punishments can include prison terms of five (5) to ten (10) years for a practitioner and the claim is submitted in the course of providing professional services; or three (3) to five (5) years for non-practitioners who file a false claim.

D. New Jersey Uniform Enforcement Act [N.J.S.A. 45:1-21]

The New Jersey Uniform Enforcement Act is a state law that 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 has engaged in “dishonesty, fraud, deception, misrepresentation, false promise or false pretense, or has “advertised fraudulently in any manner.”

E. New Jersey Consumer Fraud Act [N.J.S.A. 56:8-2, 56:8-3.1, 56:8-13, 56:8-14 and 56:8-15]



The New Jersey Consumer Fraud Act is a state law that makes it unlawful to use “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.

Penalties include a fine 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 can also be ordered.

F. New Jersey Insurance Fraud Prevention Act [N.J.S.A.17:33A1 et seq.]

This law makes it unlawful to present or cause to be presented any written or oral statement regarding a claim for payment or other benefit pursuant to an insurance policy knowing the statement contains false or misleading information or conceals material information concerning any fact regarding the claim. The purpose of this law is to combat insurance fraud 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. A violation of this law can result in substantial civil damages and penalties as well as criminal prosecution.

G. New Jersey Conscientious Employee Protection Act N.J.S.A 34:19-1 et seq

This law makes it unlawful for an employer to retaliate, defined by CEPA as the “discharge, suspension or demotion of an Employee, or other adverse employment action taken against an Employee in the terms and conditions of employment,” against any Employee who:

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:

(1) is in violation of a law, or a rule or regulation promulgated pursuant to law, including any violation 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, or in the case of an Employee who is a licensed or certified health care professional, reasonably believes constitutes improper quality of patient care; or

(2) is fraudulent or criminal, including any 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;

b. Provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any violation of law, or rule or regulation promulgated pursuant to law by the employer, or another employer with whom there is a business relationship, including any violation 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, 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 the quality of patient care; or

c. Objects to, or refuses to participate in any activity, policy or practice which the Employee reasonably believes:

1. is in violation of a law, or rule or regulation promulgated pursuant to law, including any violation 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, or if the Employee is a licensed or certified health care professional, constitutes improper quality of patient care;



2. is fraudulent or criminal, including any 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; or

3. is incompatible with a clear mandate of public policy concerning the public health, safety or welfare or protection of the environment.

Such Employee or former Employee may commence a civil action within one year of the prohibited conduct in a court of competent jurisdiction seeking remedies available under CEPA, which may include an injunction, reinstatement to their same or similar position held before such retaliatory action, appropriate compensatory damages, punitive damages and attorney's fees and costs.

In order to be protected by the CEPA disclosure to a public body provisions, the Employee must first have brought the activity, policy or practice in violation of a law, rule or regulation, to the attention of the appropriate Company Human Resources representative, by written notice and afforded the Company a reasonable opportunity to correct the activity, policy or practice. This written notice is not required if you are reasonably certain that the activity, policy or practice is known to one or more supervisors or the employer, or where you reasonably fear physical harm as a result of providing the disclosure (provided, however, that the situation is emergent in nature).

Protections Against Retaliation

Individuals within an organization who observe activities or behavior that may violate the law in some manner and who report their observations either to management or to governmental agencies are provided protections under certain laws. For example, the Federal False Claims Act includes protections for people who file *qui tam* lawsuits as described previously.

The Federal False Claims Act states that any team member who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful actions taken in furtherance of a *qui tam* action is entitled to recover damages, as well as all relief necessary to make the team member whole, including two times the amount of back pay owed to the employee. The employee can also be awarded litigation costs and reasonable attorney fees.

- The Federal False Claims Act also provides that Associates, agents and contractors engaged in other efforts to stop a violation of the Federal False Claims Act may recover damages for retaliation against them that occurs because of those efforts.
- The New Jersey False Claims Act has whistleblower protections similar to those provided by the Federal False Claims Act.
- Likewise, the New Jersey Conscientious Employee Protection Act ("CEPA"), N.J.S.A. §§ 34:19-1, et seq., prohibits an employer from retaliating against an employee because the employee:
 - i. discloses or threatens to disclose an activity that she/he reasonably believes violates the law, is fraudulent or criminal, or (for employees who are certified or licensed health care professionals) constitutes improper quality of resident or patient care;
 - ii. provides information to or testifies before a public body conducting an investigation, hearing, or inquiry into any violation of law, or (for employees who are certified or licensed health care professionals) into the quality of resident or patient care; or
 - iii. objects to or refuses to participate in an activity that she/he reasonably believes to be a violation of law, fraudulent, criminal, incompatible with a clear mandate of public policy, or (for employees who are certified or licensed health care professionals) improper quality of resident or patient care.



Available remedies may include an injunction restraining a continuing violation, reinstatement of the employee including full fringe benefits and seniority rights, compensation for lost wages, benefits, and other remuneration, punitive damages, civil fine, and payment by the employer of reasonable litigation costs and attorney fees.

Additional reporting resources include the New Jersey Medicaid Fraud and Abuse Hotline at 1-888-937-2385 or or <https://www.nj.gov/comptroller/divisions/medicaid/complaint.html> and the New Jersey Insurance Fraud Prosecutor Hotline at 877-55-FRAUD or <https://njinsurancefraud2.org/#report>).