



State of New Jersey

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DIVISION OF MENTAL HEALTH SERVICES

ADMINISTRATIVE BULLETIN TRANSMITTAL MEMORANDUM

DATE ISSUED: September 2, 2008

EFFECTIVE DATE September 15, 2008

**SUBJECT: Administrative Bulletin 7:22
Federal Deficit Reduction Act of 2005, Section 6032 – Policy on Fraud,
Waste and Abuse**

The attached Administrative Bulletin is being forwarded for your review, action if necessary, and distribution to staff as appropriate. Please be advised that each recipient of this Bulletin is responsible for being familiar with the content and ensuring that all affected personnel adhere to it. Also attached is a revised Administrative Bulletin Index for your Manual.

Kevin Martone
Assistant Commissioner

KM:pjt
Attachment

DIVISION OF MENTAL HEALTH SERVICES

ADMINISTRATIVE BULLETIN 7:22

DATE ISSUED: September 2, 2008

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- I. TITLE: Federal Deficit Reduction Act of 2005, Section 6032
Policy on Fraud, Waste and Abuse**
- II. PURPOSE:** The purpose of this Administrative Bulletin is to establish policies and procedures for all Division of Mental Health (DMHS or Division) employees, contractors or agents in regard to Section 6032 of the federal Deficit Reduction Act of 2005 and to provide detailed information about federal and state laws on: false claims; fraud, waste and abuse; and whistleblower protections.
- III. SCOPE:** This Bulletin applies to regional psychiatric hospitals in the Division of Mental Health Services in their capacity as providers in the New Jersey Medicaid program, and to all contractors and agents that provide healthcare items or services to the hospitals.
- IV. POLICY:** Section 6032 of the federal Deficit Reduction Act of 2005 (Public Law 109-171) requires that certain governmental, for-profit and non-profit providers, and other entities that receive Medicaid funding, 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 Mental Health Services (DMHS) to be in compliance with Section 6032 of the Deficit Reduction Act of 2005 and all of the federal and state statutes that are discussed in this Administrative Bulletin.
- 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 and to provide detailed information about federal and state laws on: false claims; fraud, waste and abuse; and whistleblower protections.
 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. Administrative Bulletins 7:22 and 7:23 detail the DMHS standards for compliance and specific implementation and programs for those standards.

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 DMHS contracted providers must adopt and comply with DMHS policies when providing Medicaid funded services to DMHS. Administrative Bulletins 7:22 and 7:23 must be made available to contractors' employees and managers, regardless of how much funding the organization receives from DMHS. All of DMHS contractors must adhere to the Administrative Bulletins referenced in this paragraph when providing DMHS funding services, regardless of whether the contractor has separate policies because it meets the Medicaid funding threshold independently of DMHS.

B. Definitions:

For purposes of this Administrative Bulletin, 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 to its contractors.

"Contractor or agent" means any contractor, subcontractor, or agent, or other person who, on behalf of DMHS, 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 the Division.

"Knowing and/or knowingly" means that a person, with knowledge of information, acts in a deliberate ignorance of the truth or falsity of that information or acts in reckless disregard of the truth or falsity of that information. No proof of specific intent to defraud is required to meet this standard.

Regional hospital – means those State psychiatric hospitals listed in N.J.S.A. 30:1-7 which are being utilized by the Division of Mental Health Services to treat adult psychiatric patients within designated regions of the State. These facilities are Ancora Psychiatric Hospital, Greystone Park Psychiatric Hospital, Trenton Psychiatric Hospital and Senator Garrett Hagedorn Psychiatric Hospital.

C. Procedure for Reporting Fraud, Waste or Abuse:

1. If you are an employee at DHS, DMHS, or an employee of a contractor or agent of DHS, DMHS and have reason to believe that there is fraud, waste or abuse occurring in Medicaid, you can do one of the following, in addition to the current procedures that you follow:

- a. You may report directly to Stephen Adams, the DMHS Compliance Officer, Division of Mental Health Services, P.O. Box 727, Trenton, NJ 08625, or report your concerns to your supervisor. Your supervisor will then report your belief through the chain of command, and then to the DMHS Compliance Officer. Staff will investigate the matter and take proper remedial action if your concerns are substantiated. Your supervisor(s) will keep your name confidential unless you indicate otherwise.
 - b. Alternatively, you may call the toll-free Fraud and Abuse Hotline at 1-888-9FRAUD5 (1-888-937-2835) and report any information about fraud, waste or abuse in a Medicaid 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 voice-mail message if the operator does not answer. You do not have to give your name if you choose not to do so. Staff will look into your allegations and take the proper remedial action should those allegations be substantiated. You might also receive a reward if your call leads to a monetary recovery.
 - c. You may also choose to call the toll-free hotline established by the Federal Office of the Inspector General in the U.S. Department of Health and Human Services to report any fraud, waste or abuse involving Medicaid. 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 state law from any punishment or other form of 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 monetary recovery. These laws are described in more detail in section V.D. of this Administrative Bulletin.

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- 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 of 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 may decline to do so, in which case the whistleblower may pursue the action. If either the government or the whistleblower is successful, the whistleblower is entitled to receive a percentage of the monetary recovery. If prosecuted by the Federal Government, these "qui tam" actions are generally handled by the Office of the U.S. Attorney, 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 absent the retaliatory or discriminatory conduct, double the amount of back pay owed, 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 made, 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.A. 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) for fraudulent receipt of payments or benefits, a fine of up to \$10,000, imprisonment for up to 3 years, or both; (b) for false claims, statements or omissions, or conversion of benefits or payments, a fine of up to \$10,000, imprisonment for up to 3 years, or both; (c) for kickbacks, rebates and bribes, a fine of up to \$10,000, imprisonment for up to 3 years, or both; and (d) for false statements or representations about conditions or operations of an institution or facility to qualify for payments, a 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.A. 30:4D-7.h., N.J.S.A. 30:4D-17(e)-(i); N.J.S.A. 30:4D-17.1.a.:

In addition to the criminal sanctions discussed in section 3 above, violations of N.J.S.A. 30:4D-17(a)-(d) can also result in the imposition of the following civil sanctions: (a) for unintentional violations, a recovery of overpayments with interest thereon; (b) for intentional violation, a recovery of overpayments with interest thereon, up to treble damages, and up to \$2,000 for each false claim. As indicated in section V.D.8. below, this penalty was increased to between \$5,500 and \$11,000 per false claim as a result of the New Jersey 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.A. 2C:21-4.2 & 4.3; N.J.S.A. 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/her 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/her 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.A. 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 has 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.A. 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.

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 employee or any governmental entity; and
- 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.

When a disclosure is made to a public body, the protection against retaliation 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 has 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, adding N.J.S.A. 2C:32-1 et. seq., and amending N.J.S.A. 30:4D-17(e)

The New Jersey False Claims Act (NJFCA), which was enacted on January 13, 2008 and became effective on March 13, 2008, has three parts: (1) it authorizes the NJ Attorney General and whistleblowers to initiate false claims litigation similar to what is authorized under the Federal False Claims Act, and has similar whistleblower protections; (2) it amends the NJ Medicaid statute to make violations of the NJFCA give rise to liability under NJS 30:4D-17(e); and (3) it amends the NJ Medicaid statute to increase the amount of civil penalties for each false claim under NJS 30:4D-17(e)(3) to between \$5,500 and \$11,000 per false claim from the prior amount of \$2,000 per false claim.

E. Websites for Obtaining Additional Information:

- Deficit Reduction Act – Public Law 109-171
www.gpoaccess.gov/plaws/index.html
(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/>



Kevin Martone
Assistant Commissioner

Date: _____

9/2/2008