

POLICIES AND PROCEDURES**Title: False Claims Act- New Jersey**

Effective Date: 2/09

Review Date: 2/10

Last Revision: 2/22/11

- Related Policies: a) 2.8.1a False Claims Act Signature Receipt
b) 4.1.7 Investigation Policy
c) 4.1.7a Investigation Summary Form
d) 2.7.02 Code of Business Conduct

I. Policy

TheraCare is committed to prompt, complete and accurate billing of all services provided to consumers. TheraCare and its affiliates and its employees, contractors and agents shall not make or submit any false or misleading entries on any bills or claims forms, and no employee, contractor or agent shall engage in any arrangements or participate in such an arrangement at the direction of another person, including any supervisor or manager, that results in such prohibited acts.

Further, it is the policy of TheraCare to detect and prevent fraud, waste and abuse.

This Policy explains:

1. the Federal False Claims Act (31 U.S.C. §§ 3729-33733),
2. the Federal Program Fraud Civil Remedies Act (31 USC §§ 3801-3812),
and
3. the Federal Anti-Kickback statute; Section 6032 of the Federal Deficit Reduction Act of 2005.
4. NJ EIS 15, Fraud, Waste, and Abuse.

The New Jersey laws include:

1. Medical assistance program fraud (civil and criminal), (N.J.S.A. §§ 30:4D-17 and 30:4D-17.3);

2. Health Care Claims fraud (criminal), N.J.S.A. §§ 2C:21-4.2, 2C:21-4.3, and 2C:51-5;
3. Conscientious Employee Protection Act (public and private employees), N.J.S.A. §§ 34:19-1 to 34:19-8;
4. False Claims Act, N.J.S.A. §§ 2A:32C-1 to 2A:32C-17,
5. NJ Medical Assistance and Health Services Act N.J.S.A. § 30:4D-17(a) – (d)
6. Uniform Enforcement Act N.J.S.A. § 45:1-21(b) and (o);
7. 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;

This policy also sets forth the procedures we have to put into place to prevent and report any violations of federal or New Jersey State laws regarding fraud or abuse in its programs/services.

II. Scope

This Policy applies to all families served by TheraCare, employees, including management, and all contractors and agents of TheraCare and its affiliates.

III. Overview of Relevant Laws

Like the federal False Claims Act, the New Jersey healthcare fraud laws impose liability on persons or companies that make or cause to be made false or fraudulent claims to the government for payment or who knowingly make, use or cause to be made or used, a false record or statement to get a false or fraudulent claim paid by the government.

These New Jersey laws and New Jersey Early Intervention System Policies and Procedures apply to reimbursement and prohibit, among other things:

- Billing New Jersey’s Early Intervention System or Medicaid program for services or goods not provided;
- Billing New Jersey’s Early Intervention System or Medicaid program for undocumented services;
- Making inaccurate, false or improper entries in medical records, cost reports and any other records used to support reimbursement;
- Billing New Jersey’s Early Intervention System or Medicaid program for services that are medically unnecessary;
- Characterizing non-covered services or costs in a way that secures reimbursement from New Jersey’s Early Intervention System or Medicaid program;
- Assigning an incorrect code to a service in order to obtain a higher

- reimbursement;
- Failing to seek payment from beneficiaries who may have other primary payment sources;
- Participating in kickbacks or rebates;
- Charging in excess of the allowable rate, including accepting a gift, money, donation or other compensation as a condition of admission or continued stay in a facility;
- Soliciting or receiving anything of value in return for referring, arranging, or ordering any good or service for which payment may be made in whole or in part under NJEIS services.
- Offering services in a way that wastes system resources (i.e. continuing to provide services past the authorization period).
- Only offering services based upon clinician availability.
- Altering, falsifying, destroying, or concealing medical records, income and expenditure reports or any other records that support reimbursement.

Civil and Criminal Penalties for False Claims or Statements

A violation of these laws may result in a civil penalty between \$5500 and \$11,000 for each false claim and three times the amount of the wrongful payment, plus interest, and suspension or termination from the Medicaid program. In addition, any person who violates these laws may be guilty of crimes punishable by imprisonment for up to 10 years and a fine in an amount up to \$150,000 or an amount double the amount of money gained from the crime, whichever is greater, for each act of health care claims fraud.

Civil Lawsuits

Like the federal False Claims Act, New Jersey law also allows any person or entity to file a false claim action on behalf of the state government against any persons who may have defrauded the state government by knowingly presenting a false claim for payments. A false claim may involve a false record, receipt, statement or other misrepresentations made to the government for payment. The state may choose to join in on the civil law suit. However, if the state chooses not to join the civil suit, the private plaintiff may proceed with the action without the state's participation. If the private citizen or entity bringing suit prevails, he/she may share a percentage of any monetary recovery and receive an award for reasonable attorney's fees and costs associated with the suit. In contrast, if the defendant is the prevailing party, the court may award reasonable attorney's fees and costs against the person bringing the action if the court finds the claim to have been clearly frivolous or vexatious, or brought primarily for purposes of harassment.

No Retaliation

Similar to Federal law, the New Jersey Conscientious Employee Protection Act prohibits public and private employers from retaliating, discriminating or harassing employees who disclose, threaten to disclose, or object or refuse to participate in, an activity, policy or practice of the employer that the employee reasonably believes is a violation of any law, rule or regulation, or that is fraudulent or criminal, or that constitutes improper quality of patient care. This protection extends to disclosures or testimony made in response to a government inquiry, investigation, or hearing. These laws also provide for certain monetary awards and equitable relief to the prevailing plaintiff which may include compensation for lost wages or reinstatement to a former position, plus a civil fine and punitive damages against the employer. This New Jersey Act, unlike the other laws, requires an employee to notify his/her employer in writing of any suspected illegal activity, policy or practice before disclosing it to the appropriate government agency. The purpose of this particular requirement is to give the employer a reasonable opportunity to correct the activity, policy or practice. This notice requirement does not apply to disclosures that the employee reasonably fears will result in immediate, physical harm.

Any employee who engages in or condones any form of retaliation against another employee because that employee either (1) reported a potential violation of TheraCare's Policy or regulatory violation, or (2) refused to violate TheraCare's policy or a government law or regulation, will be subject to disciplinary action up to and including separation of employment.

Enforcement and Reporting

This policy reflects the responsibility of the agency administrative staff, practitioners, and families to report incidents of suspected fraud, waste or abuse. It is required that all involved parties cooperate with any investigation. Upon receipt of an allegation of fraud, waste, or abuse, in the NJ Early Intervention System, an immediate notice will also be sent to the Part C Coordinator of the NJ EIS by the investigating party (Compliance Officer or Branch Director) including the details of the allegation, the status of the investigation and anticipated timeline for completion. This notification can not exceed 2 business days from the receipt of the allegation. Refer to TheraCare Policy and Procedure Manual 4.1.7 Investigation Policy. Upon completion of the investigation, not to exceed 45 days from the initial receipt of allegation, the investigation summary (see TheraCare Policy and Procedure Manual 4.1.7a) will be forwarded to the Part C Coordinator by the investigating party (Compliance Officer or Branch Director).

All families, employees or contractors can report fraud, waste, or abuse confidentially by calling the toll-free NJ Fraud and Abuse Hotline at **1-888-**

9FRAUD5 (1-888-937-2835) or 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 **1-800-HHS-TIPS (1-800-447-8477)**.

Distribution and Training

Prior to providing services as a TheraCare employee or independent contractor, all practitioners and administrative staff will be trained at orientation on the TheraCare False Claims Act New Jersey Policy (2.8.1), TheraCare Code of Business Conduct Policy (2.7.02), and the New Jersey Early Intervention System Policy 15 (Fraud, Waste, and Abuse). Candidates must read and acknowledge receipt and opportunity for discussion of these policies. Issues related to these policies will be reviewed at Clinician Quarterly Meetings held with all clinicians, administrative, and clinical supervisory staff.

In addition, these policies are posted online on TheraCare's website via a link from the NJ Early Intervention services page for ease of access by administrative staff, practitioners, and families: (<http://www.theracare.com/tc/services/early-intervention-nj.aspx>).

The actual page of the policies is:

(http://www.theracare.com/documents2/public/TheraCare_FalseClaimAct_NJ.pdf)

Annually, training is required on these policies as is a signed acknowledgment of receipt of training on the policies.