



Orange Township Public Schools

Orange, New Jersey
POLICY



Gerald Fitzhugh, II, Ed.D.
Superintendent of Schools

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COMPLIANCE WITH DEFICIT REDUCTION ACT

Compliance Assurance

This Policy reiterates the Orange Townships Public Schools (the "OPS") commitment to complying with the standards of conduct established by Section 6032 of the Deficit Reduction Act of 2005 ("DRA"). In accordance with this law, the OPS shall assist in preventing, addressing, and detecting fraud, waste, and abuse in federal health care programs. Towards this, the OPS shall make available to all OPS employees, contractors, and agents, including all independent contractors providing services to and/or on behalf of the OPS, written (or web-based) information regarding compliance with relevant federal and state claims laws described in Exhibit A below.

In accordance with those laws, OPS employees, agents, and contractors have a responsibility to report and are not permitted to overlook actual and potential wrong-doing. No OPS employee, contractor, or agent has the authority to direct, participate in, approve, or tolerate the violation of any law described in this Policy.

Procedure for Reporting Compliance Concerns

Any OPS employee, contractor, or agent who discovers or reasonably believes that another OPS employee, contractor, or agent may be involved in an activity prohibited by the DRA or other fraud and abuse law is required to immediately report such belie1 to his or her supervisor in the normal chain of command. Agents and contractors should contact the OPS employee most directly responsible for the activities from which the concern arises.

Any supervisor or administrator who receives a report of activity prohibited by the DRA, or other fraud and abuse law shall review the facts associated with the report and refer any material concerns to the Executive Comptroller in the Office of Financial Services for review or consultation.

If a reporting employee, contractor, or agent is uncomfortable speaking with a supervisor or the employee most directly responsible for the activities from which the concern arises, the reporting employee, agent, or contractor may report his or her concern anonymously:

OPS Fraud Hotline	(973) 733-7033
New Jersey Department of Health and Human Services	(609) 826-4701
Toll Free	(888) 937-2835
Centers for Medicare and Medicaid Services	(800) 447-8477
New Jersey Medicaid Fraud Division	(888) 937-2835

If callers choose to identify themselves, their confidentiality shall be protected to the extent permitted by law.

Non Retaliation

The OPS shall not take or tolerate any retaliatory act against an individual who, in good faith, makes a report of practices reasonably believed to be a violation of the law. Anyone who retaliates against an individual who, in good faith, makes a report of suspected violations of the law shall be subject to corrective action, including possible termination. Anyone who acts intentionally and unreasonably to report a possible concern with conduct they know was not improper shall be subject to corrective action, including possible termination.

The OPS shall not take, or tolerate, any intimidating or retaliatory act against an individual who, in good faith makes a report of practices reasonably believed to be a violation of this Policy.

Compliance Monitoring

The OPS has established internal systems and controls to monitor its coding and billing practices on an ongoing basis to ensure compliance with the DRA and similar federal and state laws.

EXHIBIT A

The following information is provided for reference purposes only. Refer to the actual statute for the complete requirements_

Federal Civil False Claims Act/"FCA")

The FCA was originally enacted in 1863 after a series of Congressional inquiries disclosed several instances of fraud among defense contractors during the Civil War. The current FCA was passed by Congress in 1982 and was amended in 1986. The FCA is designed to enhance the government's ability to identify and recover losses it suffers due to fraud. Since the FCA's enactment, the government has recovered billions of dollars through litigation or settlement of allegations that corporations and individuals violated the statute and improperly obtained federal health care program funds. Congress and the government believe that the FCA is a very effective means to detect fraud, by encouraging individuals, often called "whistleblowers" or "relators," to uncover and report fraud, and to prevent fraud, by creating strong incentives for companies and individuals to be vigilant in their pursuit of compliance and avoid liability for multiple damages and penalties under the statute.

FCA Prohibitions

The federal civil False Claims Act prohibits any individual or company from knowingly submitting false or fraudulent claims, causing such claims to be submitted, making a false record or statement in order to secure payment from the federal government for such a claim, or conspiring to get such a claim allowed or paid. Under the statute the terms "knowing" and "knowingly" mean that a person (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. Thus, specific intent to defraud is not required for there to be a violation of the law. Examples of the types of activity prohibited by the FCA include billing for services that were not actually rendered and upcoming, the practice of billing for a more highly reimbursed service or product than the one provided.

The FCA is enforced by the filing and prosecution of a civil complaint. Under the Act, civil actions must be brought within six years of a violation, or, if brought by the government, within three years of the date when material facts are known or should have been known to the government, but in no event more than ten years after the date on which the violation was committed.

Penalties

Individuals or companies found to have violated the statute are liable for a civil penalty for each claim of not less than \$5,500 and not more than \$11,000, plus up to three times the amount of damages sustained by the federal government.

Qui Tam Whistleblower Protection Provisions

The FCA authorizes the Attorney General to bring actions alleging violations of the statute for false or fraudulent claims submitted by individuals or companies that do business with, or are reimbursed by, the United States. The statute also authorizes private citizens to file a lawsuit in the name of the United States in a lawsuit commonly known as a *qui tam* action, but the United States Supreme Court has held that the statute does not authorize individuals to sue states or state agencies in a federal *qui tam* action. A *qui tam* lawsuit brought under the FCA by a private citizen commences upon the filing of a civil complaint in federal court, under seal, and service of a disclosure of material evidence on the Attorney General. The government has sixty days to investigate the allegations in the complaint and decide whether it will join the action, in which case the complaint is unsealed, and the Department of Justice or a United States Attorney's Office takes the lead role in prosecuting the claim. If the government decides not to join, the whistleblower may pursue the action alone, but the government may still join at a later date if it demonstrates good cause for doing so. As an incentive to bring these cases, the Act provides that whistleblowers who file a *qui tam* action may receive a reward of 15-30% of the monies recovered for the government plus attorneys' fees and costs. This award may be reduced if, for example, the court finds the whistleblower planned and initiated the violation. The FCA also provides that putative whistleblowers who prosecute clearly frivolous *qui tam* claims can be held liable to a defendant for its attorneys' fees and costs.

Whistleblowers are also offered certain protections against retaliation for bringing an action under the Act. Employees who are discharged, demoted, harassed, or otherwise confront discrimination in furtherance of such an action or as a consequence of whistleblowing activity are entitled to all relief necessary to make the employee whole. Such relief may include reinstatement, double back pay, and compensation for any special damages including litigation costs and reasonable attorneys' fees.

Federal Program Fraud Civil Remedies Act

The Federal Program Fraud Civil Remedies Act of 1986 (PFCRA), provides for administrative remedies against persons who make, or cause to be made, a false claim or written statement to certain federal agencies, including the Department of Health and Human Services. PFCRA was enacted as a means to address lower dollar frauds, and generally applies to claims of \$150,000 or less. PFCRA provides that any person who makes, presents, or submits, or causes to be made, presented or submitted a claim that the person knows or has reason to know is false, fictitious, or fraudulent is subject to civil money penalties of up to \$10,957 per false claim or statement and up to twice the amount claimed in lieu of damages. Violations are investigated by the Inspector General and enforcement actions must be approved by the Attorney General. PFCRA enforcement can begin with a hearing before an administrative law judge. Penalties may be recovered through a civil action brought by the Attorney General or through an administrative offset against "clean" claims. Because of the availability of other criminal, civil and administrative remedies, cases are not routinely prosecuted under PFCRA; however, the Department of Health and Human Services, Office of Inspector General has asserted its administrative authority under PFCRA in settlement agreements that resolve cases arising under the federal FCA or other federal fraud and abuse statutes.

New Jersey Medical Assistance and Health Services Act (Criminal Penalties)

Provides criminal penalties for individuals and entities engaging in fraud or other criminal violations relating to Title XIX-funded programs, which include: (a) fraudulent receipt of payments or benefits: fine of up to \$10,000, imprisonment for up to 3 years, or both; (b) false claims, statements, or omissions, or conversion of benefits or payments :fine of up to \$10,000, imprisonment for up to 3 years, or both; (c) kickbacks, rebates, and bribes: fine of up to \$10,000, imprisonment for up to 3 years, or both; false statements or representations about conditions or operations of an institution or facility to qualify for payments: 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.

New Jersey Medical Assistance and Health Services Act Civil Penalties)

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, and, as indicated in section V.D.8, Below, a penalty (which was increased from \$2,000 to \$5,500 to \$11, 000) for each false claim as a result of the NJ 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.

HealthCare Claims Fraud Act

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 five (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 five (5) times the pecuniary benefit obtained or sought to be obtained and the suspension of his license for up to one (one) 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 five (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 five (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 five (5) times the monetary benefit obtained or sought to be obtained.

The Uniform Enforcement Act

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 is engages in “dishonesty, fraud, deception, misrepresentation, false promise or false pretense; or has “[a]dvertised fraudulently in any manner.”

N.J. Consumer Fraud Act

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.

Conscientious Employee Protection Act (Whistle Blower Act)

New Jersey law prohibits an employer from tasking 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. Provided information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any violation of law, or a rule, or regulation issues 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 refused 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 give the employer a reasonable opportunity to correct the activity, policy, or practice.

New Jersey False Claims Act

The New Jersey False Claims Act (NJFCA) was enacted in January of 2008 and became effective in March of 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 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 were increased from \$2,000 per false or fraudulent claim to the federal level which is currently \$10,957 to \$21,916 per false or fraudulent claim under the NJ Medical Assistance and Health Services Act.

The NJCFA 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 cause 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.

The OPS is committed to providing an environment of honesty, integrity and trust. Whenever a OPS employee, contractor, or agent has any question or concerns about the possible application of the above laws to any activities, he or she should consult with the Executive Comptroller within the Office of Financial Services.

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Readopted by State District Superintendent:

Key Words

Compliance, Deficit, Federal Funds, Fraud, Reduction, Retaliation, Whistleblower

Legal References:

<u>N.J.S.A.</u> 18A:38-7.7 through -7.14	Legislative findings and declarations (impact aid)
<u>N.J.S.A.</u> 18A:59-1 through -3	Federal aid
<u>N.J.S.A.</u> 18A:59-1 through -3	Apportionment and distribution of federal funds; exceptions
<u>N.J.A.C.</u> 6A:32-14.1	Review of mandated programs and services
31 U.S.C. § 3729—33, as amended	Federal False Claims Act
31 U.S.C. § 3801 - 3812	Federal Program Fraud Civil Remedies Act
42 U.S.C § 1396a(a)(68)	Section 6032 of the Deficit Reduction Act of 2005
N.J.S.A. 30:4D—7(h) New Jersey Medical Assistance and Health Services Act (Civil and Criminal Penalties)	
N.J.S.A. 30:4D—17(e)—(i) N.J.S.A. 30:4D—17.1a	
N.J.S.A. 2C:21—4.2 & 4.3 N.J.S.A. 2C:51—5	Health Care Claims Fraud Act
N.J.S.A. 45:1—21 (b)&(o)	Uniform Enforcement Act
N.J.S.A. 56:8—2 N.J.S.A. 56:8—3.1 N.J.S.A. 56:8—13 N.J.S.A. 56: 14 N.J.S.A. 56:8—15	New Jersey Consumer Fraud Act
N.J.S.A. 34:19-4	Conscientious Employee Protection Act or “Whistleblower Act”
N.J.S.A. 2A:32W1 et seq.	New Jersey False Claims Act

Possible

Cross References:

'2M4	Nondiscrimination / Affirmative Action
*3220/3230	State Funds / Federal Funds
*4111.1/4211.1	Nondiscrimination / Affirmative Action Staff
'4118.5/4218.3	Grievance
'6171.3	Title 1 — No Child Left Behind

