St. Joseph's Health

Policies and Procedures

FALSE CLAIMS LIABILITY, ANTI-RETALIATION PROTECTIONS, AND DETECTING AND RESPONDING TO FRAUD

Department: CORPORATE COMPLIANCE

PURPOSE:

To satisfy the requirements of Section 6032 of the Deficit Reduction Act of 2005 by setting forth certain federal and state laws relating to liability for false claims and statements; protections against reprisal or retaliation for those who report wrongdoing; and St. Joseph's Health ("SJH") policies and procedures to detect and prevent fraud, waste and abuse.

APPLICABILITY:

- St. Joseph's Health
- St. Joseph's University Medical Center
- St. Joseph's Children's Hospital
- St. Joseph's Healthcare and Rehab Center
- St. Joseph's Wayne Medical Center
- Mission Health Coordinated Care
- St. Joseph's Health Partners

DEFINITIONS:

Knowingly making, using, or causing to be made or used, a false record or statement material to a false or fraudulent claim; conspiring to commit any violation of the False Claims Act. Falsely certifying receipt of property on a document without completely knowing that the information is true. Deliberate ignorance and "reckless disregard" of the truth.

POLICY:

It is the policy of SJH to obey all federal and state laws, to implement and enforce procedures to detect and prevent fraud, waste and abuse regarding payments to SJH from federal or state healthcare programs, and to provide protections for those who report actual or suspected wrongdoing.

PROCEDURE:

1. This policy applies to all employees, contractors and agents of SJH.

2. It is the personal responsibility of all who are associated with SJH to honor the Healthcare System's commitment to conformance to high ethical standards, and compliance with all governing laws and regulations in the delivery of healthcare and in all its business dealings.

3. Any member of the SJH workforce who knows or reasonably believes that another member may be involved in any activity prohibited by the Federal False Claims Act, similar state laws or other fraud and abuse laws should report such belief using established reporting procedures which include reporting the matter to their supervisor, any member of senior management, the Corporate Compliance Officer, or by using the corporate compliance hotline. Additionally, one may contact the New Jersey Medicaid Fraud Division at 888-937-2835 or https://www.nj.gov/comptroller/divisions/medicaid/complaint.html or to the New Jersey Insurance Fraud Prosecutor Hotline at 877-55-FRAUD or https://njinsurancefraud2.org/#report.

4. SJH will not tolerate any intimidation or retaliatory act against any individual who in good faith makes a report of practices reasonably believed to be in violation of this policy.

EXPLANATION OF LAWS:

Set forth below are summaries of certain statutes 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 Deficit Reduction Act of 2005.

FEDERAL FALSE CLAIMS LAWS

Federal False Claims Act:

The Federal False Claims Act (FCA) imposes civil liability on any person or entity who:

· knowingly files a false or fraudulent claim for payments to Medicare, Medicaid or other federally funded health care program;

· knowingly uses a false record or statement to obtain payment on a false or fraudulent claim from Medicare, Medicaid or other federally funded health care program; or

· conspires to defraud Medicare, Medicaid or other federally funded health care program by attempting to have a false or fraudulent claim paid.

"Knowingly" means:

· actual knowledge that the information on the claim is false;

· acting in deliberate ignorance of whether the claim is true or false; or

· acting in reckless disregard of whether the claim is true or false.

A person or entity found liable under the Federal False Claims Act is subject to a civil money penalty of between $5,000 and $10,000 plus three times the amount of damages that the government sustained because of the illegal act. In health care cases, the amount of damages sustained is the amount paid for each false claim that is filed.

Anyone may bring a qui tam action under the Federal False Claims Act in the name of the United States in federal court. The case is initiated by filing the complaint and all available material evidence under seal with the federal court. The complaint remains under seal for at least 60 days and will not be served on the defendant. During this time, the government investigates the complaint. The government may, and often does, obtain additional investigation time by showing good cause. After expiration of the review and investigation period, the government may elect to pursue the case in its own name or decide not to pursue the case. If the government decides not to pursue the case, the person who filed the action has the right to continue with the case on his or her own.

If the government proceeds with the case, the person who filed the action will receive between 15 percent and 25 percent of any recovery, depending upon the contribution of that person to the prosecution of the case. If the government does not proceed with the case, the person who filed the action will be entitled to between 25 percent and 30 percent of any recovery, plus reasonable expenses and attorneys' fees and costs.

Anti-discrimination

Anyone initiating a qui tam case may not be discriminated or retaliated against in any manner by their employer. The employee is authorized under the FCA to initiate court proceedings to make themselves whole for any job related losses resulted from any such discrimination or retaliation.

Program Fraud Civil Remedies Act:

The Program Fraud and Civil Remedies Act (PFCRA) creates administrative remedies for making false claims and false statements. These penalties are separate from and in addition to any liability that may be imposed under the Federal False Claims Act.

The PFCRA imposes liability on people or entities who file a claim that they know or have reason to know:

· is false, fictitious, or fraudulent;

· includes or is supported by any written statement that contains false, fictitious, or fraudulent information;

· includes or is supported by a written statement that omits a material fact, which causes the statement to be false, fictitious, or fraudulent, and the person or entity submitting the statement has a duty to include the omitted fact; or

· is for payment for property or services not provided as claimed.

A violation of this section of the PFCRA is punishable by a $5,000 civil penalty for each wrongfully filed claim, plus an assessment of twice the amount of any unlawful claim that has been paid.

In addition, a person or entity violates the PFCRA if they submit a written statement which they know or should know:

· asserts a material fact that is false, fictitious or fraudulent; or

· omits a material fact that they had a duty to include, the omission caused the statement to be false, fictitious, or fraudulent, and the statement contained a certification of accuracy.

A violation of this section of the PFCRA carries a civil penalty of up to $5,000 in addition to any other remedy allowed under other laws.

Anti-Retaliation "Whistleblower" Protections: 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, protections are afforded to people who file qui tam lawsuits under the Federal False Claims Act, which is discussed above. The Civil False Claims Act states that any employee 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. He or she is entitled to "all relief necessary to make the employee whole," including reinstatement with the same seniority status, twice the amount of back pay (plus interest), and compensation for any other damages the employee suffered as a result of the discrimination. The employee also can be awarded litigation costs and reasonable attorneys' fees.

Role of False Claims Laws: The laws described in this policy create a comprehensive scheme for controlling waste, fraud and abuse in federal and state health care programs by giving appropriate governmental agencies the authority to seek out, investigate and prosecute violations. Enforcement activities are pursued in three available forums -- criminal, civil and administrative. This provides a broad spectrum of remedies to battle this problem.

Anti-retaliation protections for individuals who make good faith reports of waste, fraud and abuse encourage reporting and provide broader opportunities to prosecute violators. Statutory provisions, such as the anti-retaliation provisions of the Civil False Claims Act, create reasonable incentives for this purpose. Employment protections create a level of security employees need to assist with the prosecution of these cases.

State Statutes Related to Section 6032 of the Deficit Reduction Act of 2005

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

In addition to the criminal sanctions discussed above, violations of N.J.S. 30:4D(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 up to $2,000 for each false claim. 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 amounts.

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 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.

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

Provides the following criminal penalties from health care claims fraud, including the submission on 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 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 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 it 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 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.

Conscientious Employee Protection Act, "Whistleblower Act", N.J.S.A. 34:19-1 et seq

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.

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.

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 in writing and given the

employer a reasonable opportunity to correct the activity, policy or practice. However, a 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 the situation is emergency in nature.

New Jersey False Claims Act supplementing Title 2A of the New Jersey Statutes and amending P.L.1968, c.413 as approved on January 13, 2008, effective March 13, 2008

The Attorney General for the State of New Jersey and whistleblowers may initiate false claims litigation under guidelines similar to the Federal False Claims Act (31 U.S.C. 3729-3733 and 3801-3812) summarized on pages 1-4 of this policy. Violations of the New Jersey False Claims Act are subject to penalties pursuant to Section 17 of P.L.1968, C.30:4d-17 as amended. Civil penalties under N.J.S. 30:4D-17(e)(3) range from $2,000 per false claim to the same level provided by the Federal False Claims Act, currently between $5,500 and $11,000 per false claim or imprisonment of not more than 3 years or both. The New Jersey False Claims Act can be viewed in its entirety at: http://www.njleg.state.nj.us/2006/PL07/265_.HTM

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

Whenever the Commissioner of Banking and Insurance determines that a person has violated any provision of this law, the commissioner may (1) bring a civil action and shall be liable for a penalty of not more than $5,000 for the first violation, $10,000 for the second violation, and $15,000 for each subsequent violation. The penalty shall be paid to the commissioner to be used in accordance with The New Jersey Automobile Full Insurance Underwriting Association and Market Transition Facility Auxiliary Fund or (2) levy a civil administrative penalty of not more than $5,000 for the first violation, $10,000 for the second violation, and $15,000 for each subsequent violation and to order restitution to any insurance company or other person who has suffered a loss as a result of a violation. The New Jersey Insurance Fraud Prevention Act can be viewed in its entirety at: https://www.nj.gov/oag/insurancefraud/pdfs/fraud-prevention-act.pdf.

POLICY AND PROCEDURES FOR DETECTING AND REVENTING FRAUD

SJH feels so strongly about our ethical responsibilities that a formal program was adopted and a Chief Compliance Officer was appointed to oversee it. As an essential element of SJH standards of conduct includes an obligation by its workforce and agents to report through the compliance program reporting mechanisms any issues or conduct that could lead to fraud, abuse or waste and policies are in place to protect the workforce from retaliation. It is hoped that employees feel free to discuss with their supervisors any compliance issues however, if this is not the case the compliance Hotline can be used anonymously.