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| <br><b>ADMINISTRATIVE<br/>POLICY MANUAL</b> | <b>THE CHILDREN'S HOSPITAL OF PHILADELPHIA</b>              | <b>No. A-1-05</b>  |
|  | <b>Title:</b><br><br><b>COMPLIANCE STANDARDS OF CONDUCT</b> | <b>Page 1 of 20</b><br><br><b>Effective Date:</b><br><b>12/13/2022</b> |

**POLICY**

The Hospital and its affiliates have adopted these Compliance Standards of Conduct in recognition of our responsibility to our patients, staff, physicians and the community. These Compliance Standards of Conduct affirm our commitment to conduct our activities with ethics, integrity and in compliance with applicable laws, regulations, policies and procedures.

**SCOPE**

This policy applies to the Trustees and Officers, employees and Medical and Research Staffs of The Children's Hospital of Philadelphia and entities controlling, controlled by or under common control with The Children's Hospital of Philadelphia, including, without limitation: The Children's Hospital of Philadelphia Foundation; The Children's Hospital of Philadelphia Practice Association; CHOP Clinical Associates; and the CHOPPA Practice Plans (currently Children's Anesthesiology Associates, Children's Health Care Associates, Children's Surgical Associates and Radiology Associates of Children's Hospital and their New Jersey counterparts) (together, the Hospital). It also applies to any other persons or entities acting or providing services on behalf of the Hospital.

**GUIDELINES**

All persons covered by this policy are responsible for following the attached Compliance Standards of Conduct.

**RESPONSIBILITY FOR MAINTENANCE OF THIS POLICY:**

VICE PRESIDENT, CHIEF COMPLIANCE AND PRIVACY OFFICER

**ATTACHMENTS**

Attachment A: Compliance Standards of Conduct | Setting the Standard: Your Compliance Guide

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| <b>Supersedes</b><br><br>01/25/2021   | <b>Approved by:</b><br><br><hr/> <b>Madeline Bell, President and Chief Executive Officer</b> |
| <p>This Administrative Policy is the property of The Children's Hospital of Philadelphia and is protected by U.S. and international copyright laws and may not be used or reproduced without the prior written consent of The Children's Hospital of Philadelphia. This Policy is to be used solely by employees of the Hospital, the Hospital Medical Staff and those acting on the Hospital's behalf either on the premises of the Hospital in connection with Hospital matters or in their Hospital duties involving the care of Hospital patients. This Policy may not be entered into a computer database or otherwise duplicated, in whole or in part in any format. Any personal or other use is strictly prohibited.</p> <p style="text-align: center;"><b>THE CHILDREN'S HOSPITAL OF PHILADELPHIA © 2022 All Rights Reserved</b></p> |  |



***CHILDREN'S HOSPITAL OF PHILADELPHIA COMPLIANCE STANDARDS OF CONDUCT***

**SETTING THE STANDARD:  
*Your Compliance Guide***

Revised December 2022



TO: Trustees, Officers, Employees and Members of the Medical and Research Staff of The Children's Hospital of Philadelphia and its affiliates

Children's Hospital has always been a place where ethics and integrity guide our mission of quality pediatric medical care, education and research. Full compliance with applicable laws and regulations is an important component of our philosophy. In support of this effort, The Children's Hospital of Philadelphia publishes these Compliance Standards of Conduct, which have been approved by the Board of Trustees.

Children's Hospital maintains a comprehensive compliance program to help us detect and prevent violations of law and fraud, abuse and waste, as well as to educate everyone regarding key legal and regulatory standards.

These Standards and our commitment to compliance have been embraced by our executive management, department chairs and Trustees. While this Guide is not comprehensive, these Standards summarize key compliance principles. These Standards do not replace or supersede any existing policies.

If you still have questions about particular matters after reviewing this document, please contact Children's Hospital's Chief Compliance Officer at 267-426-6037 or call the the Safe to Say compliance hotline at 866-246-7456 or email [Compliance@chop.edu](mailto:Compliance@chop.edu).

We recognize that getting the job done is not the only thing that counts. It's also about how we achieve our outcomes. Children's Hospital's reputation as an industry leader in pediatric healthcare, education and research requires us to do the right things and to do them the right way. It actually goes beyond complying with laws, regulations and policies. It means conducting ourselves with integrity in everything we do.

Please take the time to read these Compliance Standards of Conduct, paying particular attention to the sections that apply to your job. For detailed information, refer to specific policies referenced in each section. These detailed policies may be found in Children's Hospital's Administrative Policy Manual, the Patient Care Manual, the Human Resources Policy and Procedure Manual, or specific clinical/departmental policies and procedures that apply to you (e.g., Finance Department, Emergency Department, Operating Room, Blood Bank, Infection Control, Environmental Safety, etc.); some of these policies may be found on Children's Hospital's [@CHOP Intranet site](#).

With the personal commitment of all employees and Medical and Research Staff members, we can maintain our excellent reputation. Please join us in dedicating your best efforts to our compliance program.

Sincerely,

Madeline Bell  
President and Chief Executive Officer  
The Children's Hospital of Philadelphia

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## APPLICATION OF THIS GUIDE

These Compliance Standards of Conduct apply to the Trustees and Officers, employees and medical and research staffs of The Children's Hospital of Philadelphia and any entity that is controlled by or under common control with The Children's Hospital of Philadelphia, including: The Children's Hospital of Philadelphia Foundation; The Children's Hospital of Philadelphia Practice Association; CHOP Clinical Associates; and the CHOPPA Practice Plans, currently Children's Anesthesiology Associates, Children's Health Care Associates, Children's Surgical Associates and Radiology Associates of Children's Hospital and their New Jersey counterparts. The term "Children's Hospital" in this document refers to all of those entities. These Compliance Standards of Conduct also apply to people or entities acting or providing services on behalf of Children's Hospital.

## CODE OF CONDUCT STATEMENT

Ethics, integrity and compliance have always been valued principles at Children's Hospital. Our compliance program has been established to formally educate the Medical Staff and employees about the laws, regulations, policies and procedures governing our activities and to detect and prevent fraud, abuse and waste. By encouraging the identification, communication and correction of compliance issues, our compliance program helps ensure that all our activities are ethical and legally compliant.

Please review the applicable sections of these compliance Standards of Conduct. Children's Hospital expects you to comply with both the letter and spirit of the compliance program.

Our compliance program is intended to be a formal statement of Children's Hospital's approach to compliance matters. However, some situations may arise in which you are unclear whether the conduct is acceptable or not. In those situations, *raise the concern with your supervisor, or the Chief Compliance Officer, or if it is a legal issue, contact the Office of General Counsel.*

Each employee is a valued member of the team and each has an obligation to see that Children's Hospital maintains its high standards of professional, ethical conduct.

## YOUR OBLIGATION TO REPORT

If you encounter any situation that you believe may be in violation of any applicable law or Children's Hospital policy or procedure, you should immediately contact your supervisor, the Chief Compliance Officer or a member of the Office of General Counsel. You may also call the anonymous, toll-free Safe to Say compliance hotline at 866-246-7456, or go to [www.mycompliancereport.com](http://www.mycompliancereport.com) (enter "CHOP" for the access ID). Everyone is responsible for promoting compliance.

## **USING THE COMPLIANCE PROGRAM**

### **Purpose of Our Compliance Standards of Conduct**

These Compliance Standards of Conduct provide those of us who work at Children’s Hospital with information to help carry out our job responsibilities within appropriate ethical and legal parameters. These obligations apply to all our relationships in connection with Children’s Hospital, including relationships with patients, families, physicians, third-party payors, subcontractors, independent contractors, vendors, consultants or each other.

These Standards are a critical component of our overall compliance program, developed to help you meet ethical standards and comply with applicable laws and regulations.

These Compliance Standards of Conduct are not intended to be an all-inclusive statement of our duties and obligations. Children’s Hospital maintains numerous detailed policies and procedures that govern our activities, duties, and obligations. In some cases, a subject discussed in this Guide involves such complexity that additional guidance may be needed. In these cases, you should consult the applicable policy or procedure for further information or contact your supervisor, the Office of General Counsel, or the Chief Compliance Officer for additional guidance.

### **Management’s Compliance Obligations**

We expect leaders to set the example and be models for their staff members. As the caretakers of our quality and reputation, you must strive to assure that everyone on your team has sufficient information to comply with applicable laws, regulations and policies, as well as the resources to resolve ethical and compliance dilemmas. As leaders, you must help sustain the culture within Children’s Hospital that promotes high standards of ethics and compliance. Managers and supervisors are also accountable for appropriately educating their staff about our compliance program.

### **Disciplinary Action**

If you violate applicable laws or Children’s Hospital policies or procedures, you may be subject to disciplinary action. The specific action will depend on the nature and severity of the violation (and, where applicable, will be consistent with Children’s Hospital’s Human Resources Policy and Procedure Manual or other applicable disciplinary standards).

Discipline may include:

- ◆ General counseling
- ◆ Oral warning
- ◆ Written warning
- ◆ Final Warning in Lieu of Suspension, or Suspension
- ◆ Unpaid Suspension
- ◆ Discharge
- ◆ Medical Staff sanctions (set forth in the Medical Staff Bylaws)

### **Chief Compliance Officer**

Children’s Hospital’s compliance program demonstrates the Hospital’s commitment to high ethical standards and compliance with applicable laws, regulations, policies and procedures. The Chief Compliance Officer (CCO) assists Children’s Hospital with the following activities:

- ◆ Assesses Children’s Hospital’s compliance activities

- ◆ Monitors implementation of the Hospital's compliance program
- ◆ Provides/facilitates education and training regarding laws and regulations affecting the organization
- ◆ Communicates to senior leaders and the Board of Trustees, including its Audit, Compliance and Risk Committee, on the compliance program and presents compliance policies, reports and plans for approval as appropriate
- ◆ Follows up on compliance findings, ensuring that appropriate corrective action has been taken
- ◆ Continuously monitors the effectiveness of compliance activities, including the effectiveness of the compliance program

### **Reporting Compliance Concerns**

It is your duty to report any conduct that you reasonably believe violates our policies or applicable law to your supervisor, the Office of Compliance and Privacy, a member of the Office of General Counsel, or the Safe to Say compliance hotline. If you wish, you may make an anonymous report to the Safe to Say compliance hotline (866-246-7456 or [www.mycompliancereport.com](http://www.mycompliancereport.com)). It is the policy of Children's Hospital not to attempt to learn the identity of persons making anonymous reports to the Safe to Say compliance hotline.

Children's Hospital will not take any action against someone for reporting a compliance violation in good faith. Children's Hospital prohibits intimidation and any retaliation against persons for making good faith compliance reports. If you were a party to the non-compliant activity you reported, your good faith efforts will be considered in assessing whether disciplinary action against you is appropriate.

We are committed to investigating all reports promptly and protecting your confidentiality and anonymity as much as possible. If you contact the Safe to Say compliance hotline anonymously and wish to obtain an update on the status of the matter reported, you will be given a special case number and information about when and how to call back at the time of your initial call. To the extent that is possible and appropriate, an update will be provided to you. Once an investigation is completed, action to address the issue will be taken as soon as practicable.

Employees are protected by federal and state whistleblower statutes, which protect employees who report fraud, waste, abuse or other violations of law. For additional information on whistleblower actions under the False Claims Act and certain state laws and immunity under federal trade secret law, please refer to the attached Appendix. Whistleblower protection statutes also apply to employees who work on federal grants and contracts. For details on whistleblower actions and protections applicable to federal grants, please refer to the attached Appendix.

### **Education and Training**

Children's Hospital is committed to effectively communicating our standards and procedures to all employees. We provide education and training to develop compliance awareness and commitment. You must attend required compliance training that is applicable to your job function.

We will track your participation in required compliance training and will maintain records of participation in accordance with our compliance training procedures.

### **Compliance Monitoring**

Children's Hospital is committed to responsibly monitoring implementation of the compliance program. Department managers are responsible for monitoring compliance in their areas on an ongoing basis. In addition, the Office of Compliance and Privacy develops annual compliance plans.

## **RELATIONSHIPS WITH PATIENTS**

### **Patient Care and Rights**

In our mission to provide quality healthcare, research and education, we work hard to treat all patients and their families with respect and dignity and to provide care that is necessary and appropriate. We seek to make no distinctions in the admission, transfer or discharge of patients or in the care we provide based on race, color, age, sex, gender identity or expression, sexual orientation, national origin, religion and disability.

Upon admission, each patient/family is given a statement of patient rights and responsibilities, including information about the right to make decisions regarding medical care.

We encourage patient and family involvement in all aspects of care. Children's Hospital's Patient Care policy, Patient and Family Rights and Responsibilities ([RI-2-01](#)) and associated Job Aid provide additional guidance. Please refer to this policy if you have any questions regarding related issues.

### **Emergency Treatment**

Children's Hospital provides medical screening and treatment to all patients who come to Children's Hospital seeking treatment for an emergency medical condition, as required by the Emergency Medical Treatment and Labor Act ("EMTALA"). We do not deny emergency treatment to any patient who comes to Children's Hospital based upon inability to pay or lack of insurance. EMTALA establishes detailed requirements on when and how a patient who has an unstabilized emergency medical condition may be transferred to another institution. If you have any questions about EMTALA requirements, please refer to CHOP's EMTALA policy ([A-4-24](#)) or contact the Office of General Counsel.

### **Charity Care and Discounts**

Children's Hospital provides services that are medically necessary to all pediatric patients in our Primary Service Area, regardless of ability to pay, in accordance with our Financial Assistance (formerly Charity Care) policy. For more information, please refer to the Financial Assistance policy ([A-2-03](#)) in the Administrative Policy Manual. Children's Hospital offers prompt payment discounts for the prompt payment of patient/family financial obligations, in accordance with the Prompt Payment policy ([A-2-04](#)). Children's Hospital does not grant any routine waivers or discounts in other circumstances and does not extend professional courtesy to patients based on their relationship with CHOP physicians, officers or directors. For more information refer to the Discounts and Reductions of Patient/Family Financial Obligations policy ([A-2-05](#)).

## **CONFIDENTIALITY OF PATIENT AND INSTITUTIONAL INFORMATION**

Patients and their families trust their healthcare providers with highly personal and sometimes sensitive or embarrassing information regarding their personal and medical history. If patients or families do not feel confident that their providers will keep such information private, they may hesitate to discuss intensely private issues, which could hinder their medical care. In addition, federal, state and local laws provide protection for the confidentiality of patient medical records and require that only authorized personnel shall have access to that information and that disclosures are limited.

It is critical that healthcare providers protect patient information and patient privacy. Because this protection is one of our highest duties as a healthcare provider, you are expected to understand when disclosures are allowable and/or required and when they are not. These rules are outlined in detail in Children's Hospital's policies related to patient health information.



In addition, it is important to remember that CHOP institutional information must be protected. CHOP proprietary information such as non-public research information, intellectual property, trade secrets and the private information of our workforce (e.g., payroll information) should remain confidential.

For more information, refer to the Confidentiality of Patient and Institutional Information policy ([A-3-05](#)) and related policies.

## **RELATIONSHIPS WITH PAYORS**

### **Coding and Billing for Services**

Children's Hospital takes great care to assure that there are systems in place for submitting claims for reimbursement to government and private insurance payors that are truthful, accurate and conform to the requirements of federal, state and local laws and regulations. These laws include the federal False Claims Act as well as state False Claims Act legislation and other laws prohibiting schemes to defraud a healthcare benefit program.

The federal False Claims Act prohibits an individual or organization from knowingly or recklessly submitting a false claim for payment or approval to a federal or state health care program. It also prohibits knowingly or recklessly making, using, or causing to be used a false record or statement to get a false or fraudulent claim paid by the government. Violations may result in civil, criminal and administrative actions and be punishable by substantial monetary penalties, fines, imprisonment and exclusion from federal and state health care programs. We prohibit any employee or agent of Children's Hospital from knowingly presenting or causing claims to be presented for payment or approval that are false, fictitious, intentionally misleading, fraudulent, or in violation of any law. For a further description of the federal false claims laws, please refer to the attached Appendix.

Both Pennsylvania and New Jersey have laws prohibiting persons from knowingly or intentionally submitting false claims or statements in connection with providing services or merchandise under medical assistance, or in connection with applying for or continuing to receive medical assistance benefits or payments. New Jersey enacted the New Jersey False Claims Act as well as the Health Care Claims Fraud Act which also prohibits health care practitioners licensed in New Jersey and others from committing health care claims fraud in the course of providing professional services. Violations of these laws may result in criminal actions punishable by imprisonment, substantial monetary penalties and fines. For a further description of Pennsylvania's and New Jersey's laws, please refer to the attached Appendix.

Children's Hospital uses diligent efforts to maintain systems that result in fair, reasonable and accurate claims submission, including the following specific objectives:

- (1) Billing only for items or services actually rendered;
- (2) Billing only for medically necessary services;
- (3) Preventing upcoding (the practice of using a billing code that provides a higher payment rate than the billing code that actually reflects the service furnished to the patient);
- (4) Submitting accurate cost reports;
- (5) Appropriately bundling or combining services that should be billed together;

- (6) Billing the appropriate per-diem rate for patient transfers to another hospital;
- (7) Creating and maintaining supporting medical record documentation for services billed to patients or payors;
- (8) Billing for the services of teaching physicians only in accordance with applicable laws;
- (9) Avoiding submission of claims arising from impermissible anti-kickback arrangements.

We maintain oversight systems to verify that claims are submitted only for services actually provided and that services are billed as provided. Failure to follow these principles could result in submission of false claims.

Any subcontractors engaged to perform billing or coding services should have the necessary skills, quality assurance processes, systems and appropriate procedures to ensure that all billings for government and private insurance programs are accurate and complete.

It is the obligation of all staff to bring to the attention of your supervisor or the Chief Compliance Officer, or report to the Compliance Hotline if you prefer, any billing practices you observe that are not truthful, accurate or in conformity with the requirements of federal, state and local laws and regulations.

In addition, the federal False Claims Act allows private persons to bring “whistleblower” actions in the name of the government if they believe the False Claims Act has been violated and to recover substantial monetary rewards if the action results in a settlement or judgment. The False Claims Act protects the rights of whistleblowers; it is a violation of the Act for an employer to take any action against someone for participating in an action under the False Claims Act, including investigation for, initiation of, testimony for, or assistance in an action under the False Claims Act. Other laws also provide protection of whistleblowers in certain circumstances. We prohibit any individual or agent of Children’s Hospital from violating the non-retaliation provisions of the False Claims Act or any other applicable law.

Certain states also have false claims laws with private enforcement and whistleblower protection provisions comparable to the federal False Claims Act. Of the states in which Children’s Hospital operates or has affiliates, New Jersey and Delaware have such a law, while Pennsylvania currently does not. New Jersey and Pennsylvania have separate whistleblower protection laws that, along with New Jersey’s and Delaware’s false claims laws, are more fully described in the attached Appendix.

For possible improper practices involving Pennsylvania Medicaid billing you may also choose to contact the Pennsylvania Department of Public Welfare’s Fraud and Abuse Hotline at 1-855-FRAUD-PA (1-855-372-8372).

### **Excluded Parties**

There are restrictions on healthcare providers and other entities employing or entering into contracts with individuals or entities that are (at the time of employment or contract) excluded from participation in federal or state health care programs.

We require individuals applying for employment to disclose in their application any felonies or other crimes or exclusion action. Screening of potential employees and Medical Staff members includes consulting applicable government lists of excluded persons/entities.

We conduct monthly checks of federal and state databases to verify that our employees, Medical Staff members and certain contractors/vendors are not excluded, unlicensed, or uncertified, where applicable.

If an employee or member of the Medical Staff is investigated by any government agency for violation of a licensure, certification, or health care law or regulation, the investigation should be reported immediately to the Office of General Counsel and/or the Chief Compliance Officer.

If an employee or member of the Medical Staff is indicted, convicted, debarred, suspended or excluded from participation in federal or state healthcare programs while affiliated with Children's Hospital, or receives notice of proposed debarment or exclusion, this fact must be reported in accordance with applicable policies or standards of Children's Hospital and/or its Medical Staff, as applicable.

### **Credit Balances & Bad Debts**

CHOP will treat credit balances and bad debt in compliance with applicable law and regulations.

In some instances, a credit balance will exist in a patient account after payment by both the patient and a federal or state healthcare program. We endeavor to accurately track, report and refund credit balances.

### **Cost Reports**

Our activities include reimbursement under government programs that require us to submit certain reports of our costs of operation. Children's Hospital will comply with all federal, state and local laws relating to cost reports. These laws and regulations define what costs are allowable and outline the appropriate methodologies to claim reimbursement for the cost of services provided to program beneficiaries. Given the complexity of these requirements, all issues related to the completion and settlement of cost reports must be communicated through or coordinated with our Finance Department.

### **RELATIONSHIPS WITH REFERRAL SOURCES**

Federal law generally prohibits payments in exchange for or to induce referral of patients or business to other healthcare providers or suppliers. This prohibition is very broad and applies both to those who offer or make such payments and to those who receive such payments. In addition, a payment may be anything of value, not just cash payments. There may be criminal as well as civil sanctions for violation of this prohibition.

Children's Hospital accepts patient referrals and admissions based on patients' clinical needs and our ability to render the needed services. We do not pay or offer anything of value, directly or indirectly, to anyone for referring or to induce the referral of patients or business to us.

Similarly, Children's Hospital makes referrals to other healthcare providers or suppliers based on patients' clinical needs, the ability of other providers or suppliers to render needed services and patient/family preferences. We do not solicit or receive anything of value, directly or indirectly, in exchange for or to induce referring patients to any other healthcare provider or supplier.

Federal law also generally prohibits us from giving anything of value to patients or families that we know (or should know) would likely influence their decision to receive services from Children's Hospital. There are permitted exceptions to this general prohibition when the value being offered relates to the promotion of certain preventive care services or involves situations where the patient/family is indigent or in financial need.

Federal law also has prohibitions against a physician referring patients for certain services (such as clinical labs) to facilities or providers with which the referring physician (or a family member of that physician) has a financial relationship or financial interest. Violations can result in fines and exclusion from Medicare or Medicaid. The law is complex; it applies only to certain services and has many exceptions. Please contact the Office of General

Counsel with questions about these laws or to discuss proposed arrangements with other providers, to be sure those arrangements comply with applicable law.

## **RELATIONSHIPS WITH COMPETITORS**

### **Antitrust**

Antitrust laws are designed to create a level playing field in the marketplace and to promote fair competition. These laws could be violated by discussing Children's Hospital business with a competitor (such as what our prices are or how our prices are set), disclosing the terms of supplier relationships, allocating markets among competitors or agreeing with a competitor to refuse to deal with a supplier. Questions related to these matters should be directed to the Office of General Counsel.

### **Marketing Our Services**

We may use our marketing and advertising activities to educate the public, provide information to the community, increase awareness of our services and recruit employees. We will present only truthful, fully informative and non-deceptive information in these materials and announcements.

**RELATIONSHIPS WITH VENDORS**We select the vendors and contractors with which we do business on the basis of arms-length and appropriate business criteria and not on the basis of gifts to persons, the existence or amount of other support a vendor or contractor provides to Children's Hospital (except in connection with a legally appropriate discount or rebate), vendor or contractor support of Children's Hospital research, or other inappropriate factors. We endeavor to conduct business with vendors and contractors in a way that maximizes the ability of Children's Hospital to carry out its patient care, research and education missions and in accordance with legal and ethical standards aimed at preventing conduct that may inappropriately influence purchasing decisions. Please refer to the Interactions with Vendors policy ([A-3-07](#)) and related policies, such as the Control of On-site Activity by Vendors ([A-3-08](#)) for more information.

## **RELATIONSHIPS WITH FOREIGN GOVERNMENTS AND OFFICIALS**

We conduct activities in foreign countries and with foreign officials in full compliance with potentially applicable anti-corruption laws, including the U.S. Foreign Corrupt Practices Act, the UK Bribery Act and other potentially applicable local anti-corruption laws. We are committed to the highest ethical standards in all of our activities and interactions. CHOP personnel will not give or offer anything of value, directly or indirectly, to any foreign official or any other individual for the purpose of improperly obtaining or retaining a business advantage. Simply put, bribes, kickbacks or similar payments are never permitted.

Please refer to the International Anti-Corruption Compliance policy ([A-3-16](#)) and related policies for more information.

## **RELATIONSHIPS WITH EMPLOYEES AND MEMBERS OF THE MEDICAL STAFF**

We use our best efforts to comply with all state and federal laws governing relationships with employees and independent contractors. Children's Hospital maintains policies that address many issues relating to employment at Children's Hospital. For additional guidance on any employee policy or practice, please refer to the Administrative and Human Resources Policy and Procedure Manuals. In particular, please refer to:

- **Equal Employment Opportunity and Affirmative Action – Human Resources policy ([2-1](#))**
- **Non-Discrimination, Harassment and Retaliation – Administrative policy ([A-4-18](#))**
- **Workplace Violence – Administrative policy ([A-4-34](#))**
- **Drug Free Workplace – Administrative policy ([A-4-23](#))**

### **Environmental Health and Safety**

Children’s Hospital is committed to providing a safe work place. You may work in a variety of situations or with a variety of materials, some of which may pose a risk of injury. You are required to comply with our policies and procedures for workplace safety, which have been designed to comply with federal, state and local safety laws and regulations and workplace safety directives. If you have a question about safety, you should seek advice from the Environmental Health and Safety Office.

It is essential that you report any work place injury or any situation presenting a danger of injury so that timely corrective action may be taken. Please refer to relevant Safety policies such as policies, Hazard Communication ([S6.1](#)) and Chemical Spill Response ([S7.1](#)) for more details related to chemical hazards.

### **Background Checks and Credentialing**

Children’s Hospital endeavors to conduct formal background and credentialing checks on all employees, Medical Staff members and certain vendors/contractors. Children’s Hospital reserves the right to deny employment or continued employment or Medical Staff membership or work/contracts for goods or services to any individual who fails to meet our standards. See also “Excluded Parties,” at pages 10-11.

### **CONFLICTS OF INTEREST**

Conflicts of interest are those circumstances in which your personal interests may actually or potentially conflict with those of Children’s Hospital or may be perceived as actually or potentially conflicting with those of Children’s Hospital. Children’s Hospital has adopted a Conflicts of Interest policy ([A-3-01](#)). The policy outlines circumstances in which outside interests or activities, such as accepting gifts, holding ownership interests in companies, or engaging in outside activities, may create a potential, perceived, or actual conflict of interest. The policy also contains special rules for conflict of interest issues in the research setting.

A potential, perceived, or actual conflict of interest situation may arise at any time. The Conflicts of Interest Policy requires that such situations be disclosed promptly, as soon as the existence of the potential, perceived, or actual conflict of interest is or should be known, so that you can obtain guidance about the situation at the earliest possible time. If there is any doubt about a situation, it should be fully disclosed to the Office of Compliance and Privacy so that a determination can be made.

Please refer to the Conflicts of Interest policy ([A-3-01](#)) and the [Compliance @CHOP intranet site](#) for more information regarding Conflicts of Interest.

### **INSIDER TRADING**

Children’s Hospital and/or its personnel may have access to information about Children’s Hospital or companies and entities with which it has some relationship that would be considered material non-public information under the securities laws. Information that an investor might consider important in deciding whether to buy, sell, or hold securities is considered “material.” Information is considered to be “non-public” unless it has been effectively and broadly disclosed to the public, for example by a press release and the stock market has had ample time to digest

the information. Simply because the information is discussed widely within Children's Hospital does not mean that such information is public.

Insider trading includes buying or selling securities (e.g., stocks, bonds, options, etc.) while in possession of material non-public information, or communicating ("tipping") material nonpublic information to another person who trades in publicly held securities on the basis of the information or who in turn passes the information on to someone who trades.

Penalties for violating these federal rules can include civil fines, criminal fines and imprisonment.

Children's Hospital has an Insider Trading policy ([A-3-15](#)) to address this issue. All individuals affiliated with Children's Hospital and their family members (defined in the policy) must abide by that policy. The policy includes restrictions on the ability of hospital personnel to trade under certain circumstances. Please refer to the policy and consult with Children's Hospital's Office of General Counsel with questions or when required under the policy.

## **INFORMATION AND COMMUNICATION SYSTEMS**

You may have access to Hospital technology resources such as computers, electronic mail services, Internet access, communications devices and systems such as telephones and faxes and portable devices such as iPhones, tablets, cellular telephones and pagers. These technology resources are the property of Children's Hospital and are intended to be used for purposes related to Children's Hospital's business and operations. You should assume that communications using Hospital systems are not private. Children's Hospital has the right to access, monitor and disclose the contents of our communications systems without notice to the users to the extent allowable by law.

All uses of Children's Hospital technology resources must comply with applicable Hospital policy, including Acceptable Use of Technology Resources policy ([A-3-06](#)). As a general rule, only minimal personal use of Children's Hospital's assets is permitted. Children's Hospital may revoke access to our technology resources or take disciplinary action if you use them in violation of our policies or in violation of any applicable law or regulation.

## **GOVERNMENT INQUIRIES/INVESTIGATIONS**

Children's Hospital expects you to cooperate appropriately in government investigations. However, it is essential that the legal rights of Children's Hospital and our employees, Medical Staff members and patients be protected.

If you receive a subpoena, inquiry, or other document from any government agency regarding Children's Hospital's business or patients, whether at home or in the workplace, notify the Office of General Counsel (with a copy to the Office of Compliance and Privacy) immediately. Please notify the Health Information Management Department in the case of subpoenas for medical records.

If you are aware of an imminent or ongoing investigation, audit, or examination, you should retain all documents (including computer records) in your custody or control relating to the matter under review.

Any questions regarding government inquiries or investigations should be addressed to the Office of General Counsel.

**POLITICAL AND LEGISLATIVE ACTIVITIES**

Children’s Hospital, including its affiliates, is exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code. In order to maintain this status, Children’s Hospital may not participate in any political campaign on behalf of or in opposition to any candidate for public office. This is an absolute prohibition. In addition, Children’s Hospital cannot engage in more than insubstantial lobbying on legislative issues. Individuals are free to engage in political and legislative activities in their personal capacity on their personal time. Children’s Hospital titles, letterhead and resources may not be used for political activities; and they may be used for legislative activities only with the permission of a member of senior management.

**APPENDIX**Summary of Federal and State Laws**Federal Laws****a. The False Claims Act**

The False Claims Act (“FCA”) provides, in pertinent part, that:

## (A) Any person who—

- (1) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;
- (2) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;
- (3) conspires to commit a violation of subparagraph (A), (B), (D), (E), (F), or (G);
- (4) has possession, custody, or control of property or money used, or to be used, by the Government and knowingly delivers, or causes to be delivered, less than all of that money or property;
- (5) is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;
- (6) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge property; or
- (7) knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government, is liable to the United States Government for a civil penalty of not less than \$12,537 and not more than \$25,076 as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990. . . plus 3 times the amount of damages which the Government sustains because of the act of that person.

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## (B) For purposes of this section—

## (1) the terms “knowing” and “knowingly”—

## (A) mean that a person, with respect to information—

- (i) has actual knowledge of the information;
- (ii) acts in deliberate ignorance of the truth or falsity of the information; or
- (iii) acts in reckless disregard of the truth or falsity of the information; and

## (B) require no proof of specific intent to defraud

31 U.S.C. § 3729. While the False Claims Act imposes liability only when the claimant acts “knowingly,” it does not require that the person submitting the claim have actual knowledge that the claim is false. A person who acts in reckless disregard or in deliberate ignorance of the truth or falsity of the information also can be found liable under the Act. 31 U.S.C. § 3729(b).

In sum, the False Claims Act imposes liability on any person who submits a claim to the federal government that he or she knows (or should know) is false. An example may be a physician who submits a bill to Medicare for medical services she knows she has not provided. The False Claims Act also imposes liability on an individual who may knowingly submit a false record in order to obtain payment from the government. An example of this may include a government contractor who submits records that he knows (or should know) are false and that indicate compliance with certain contractual or regulatory requirements. The third area of liability includes those instances in which someone may obtain money from the federal government to which he may not be entitled and then uses false statements or records in order to retain the money. An example of this so-called “reverse false claim” may include a hospital that obtains interim payments from Medicare throughout the year and then knowingly files a false cost report at the end of the year in order to avoid making a refund to the Medicare program.

In addition to its substantive provisions, the FCA provides that private parties may bring an action on behalf of the United States. 31 U.S.C. § 3730(b). These private parties, known as “qui tam relators,” may share in a percentage of the proceeds from an FCA action or settlement. Section 3730(d)(1) of the FCA provides, with some exceptions, that a qui tam relator, when the Government has intervened in the lawsuit, shall receive at least 15% but not more than 25% of the proceeds of the FCA action depending upon the extent to which the relator substantially contributed to the prosecution of the action. When the Government does not intervene, section 3730(d)(2) provides that the relator shall receive an amount that the court decides is reasonable and shall be not less than 25% and not more than 30%.

The FCA provides protection to qui tam relators who are discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of their employment as a result of their furtherance of an action under the FCA. 31 U.S.C. § 3730(h). Remedies include reinstatement with comparable seniority as the qui tam relator would have had but for the discrimination, two times the amount of any back pay, interest on any back pay and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys’ fees.



**b. The Federal Program Fraud Civil Remedies Act (“PFCRA”)**

This federal law makes it illegal for a person or entity to make, present or submit (or cause to be made, presented or submitted) a “claim” (i.e., a request, demand or submission) for property, services, or money to an “authority” (i.e., an executive department of the federal government, e.g., the U.S. Department of Health and Human Services which oversees Medicare and Medicaid programs) when the person or entity “knows or has reason to know” that the claim: (i) is false, fictitious or fraudulent; or (ii) includes or is supported by any written statement which asserts a material fact which is false, fictitious or fraudulent; (iii) includes or is supported by any written statement that omits a material fact, is false, fictitious or fraudulent as a result of such omission and is a statement in which the person or entity has a duty to include such material fact; or (iv) is for the provision of items or services which the person or entity has not provided as claimed. 31 U.S.C. § 3802(a)(1).

In addition, it is illegal to make, present or submit (or cause to be made, presented, or submitted) a written “statement” (i.e., a representation, certification, affirmation, document, record, or accounting or bookkeeping entry made with respect to a claim or to obtain the approval or payment of a claim) if the person or entity “knows or has reason to know” such statement: (i) asserts a material fact which is false or (ii) omits a material fact making the statement false, fictitious or fraudulent because of the omission. 31 U.S.C. § 3802(a)(2).

Similar to the Federal False Claims Act, the PFCRA broadly defines the terms “knows or has reason to know” as (1) having actual knowledge that the claim or statement is false, fictitious, or fraudulent; (2) acting in deliberate ignorance of the truth or falsity of the claim or statement; or (3) acting in reckless disregard of the truth or falsity of the claim or statement. The law specifically provides that a specific intent to defraud is not required in order to prove that the law has been violated. 31 U.S.C. § 3801(a)(5).

The PFCRA provides for civil penalties of up to \$11,665 for each false claim paid by the government and in certain circumstances, an assessment of twice the amount of each claim.

In addition, if a written statement omits a material fact and is false, fictitious or fraudulent because of the omission and is a statement in which the person or entity has a duty to include such material fact and the statement contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement, the law provides for a penalty of up to \$11,665 to be imposed for each such statement.

**c. Federal Whistleblower Protections for Employees of Contractors, Subcontractors and Grantees**

The employee whistleblower statute applies to all employees working for contractors, grantees, subcontractors and subgrantees on federal grants and contracts and states that such persons “may not be discharged, demoted, or otherwise discriminated against as a reprisal for [whistleblowing].” 41 U.S.C. § 4712(a)(1).

Whistleblowing is defined as making a disclosure “that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant.” 41 U.S.C. § 4712(a)(1).

To qualify under the statute, the employee’s disclosure must be made to “(A) a member of Congress or a representative of a committee of Congress; (B) an Inspector General; (C) the Government Accountability Office; (D) a Federal employee responsible for contract or grant oversight or management at the relevant agency; (E) an authorized official of the Department of Justice or other law enforcement agency; (F) a court or grand jury; or (G) a management official or other employee of the contractor, subcontractor, or grantee who has the responsibility to investigate, discover, or address misconduct.” 41 U.S.C. § 4712(a)(2).

**d. Federal Trade Secrets Law Whistleblower Provision**

Pursuant to the 2016 Defend Trade Secrets Act (DTSA), no individual will be held criminally or civilly liable under Federal or State trade secret law for disclosure of a trade secret (as defined in the Economic Espionage Act) that is: (A) made in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney and made solely for the purpose of reporting or investigating a suspected violation of law; or, (B) made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal so that it is not made public. An individual who pursues a lawsuit for retaliation by an employer for reporting a suspected violation of the law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual files any document containing the trade secret under seal and does not disclose the trade secret, except as permitted by court order.

**Pennsylvania Laws****a. Fraud and Abuse Control under the Public Welfare Code**

This law contains provisions relating to acts prohibited by providers (62 P.S. §1407) and other acts relating to applications for medical assistance or the receipt of benefits under the program (62 P.S. § 1408). Under Pennsylvania law, it is unlawful for providers to: knowingly or intentionally submit false information, or false claims or costs reports for furnishing services or merchandise under the medical assistance program, or claims or cost reports for medically unnecessary services or merchandise, or for the purpose of obtaining greater compensation than that to which the provider is legally entitled; solicit, receive, offer, or pay remuneration, including kickbacks, bribes or rebates in connection with furnishing services or merchandise under the medical assistance program; submit duplicate claims for which the provider has already received or claimed reimbursement; submit a claims for services, supplies or equipment not rendered to a recipient; submit claims which include costs or charges not related to the services, supplies or equipment rendered to the recipient; submit

claims for or refer recipients to another provider for unnecessary services, supplies or equipment; submit claims which misrepresent information about such things as the services provided, supplies or equipment provided, date of service, or identify of the practitioner or provider; submit claims for reimbursement higher than the provider's charge to the general public; submit claim for a service or item without a practitioner's written order and consent of the recipient (except in emergencies); or render a service or item without making a reasonable effort to verify through a current medical assistance card that the patient is in fact currently eligible (except in emergencies). Violations can result in criminal and civil penalties, including monetary penalties and termination of participation as a provider in the medical assistance program.

Under Pennsylvania law, it is also unlawful for other persons to: knowingly or intentionally make false statements or fail to disclose material facts regarding eligibility for themselves or another for medical assistance benefits; fraudulently conceal knowledge of events affecting the person's initial or continued right to receive such benefits; convert benefits to a use other than for himself or the person for whom the benefits were intended; visit multiple providers for the purpose of obtaining excessive services or benefits beyond what is reasonably needed; or borrow or use a medical assistance card without entitlement to do so. Violations can result in criminal and civil penalties, including monetary penalties and restrictions on continued eligibility for medical assistance benefits. (62 P.S. §.1408).

**b. Whistleblower Law**

Pennsylvania law protects the rights of employees of public bodies, such as state or local governments, who make good faith reports about wrongdoing or waste, or who participate in an investigation, hearing or inquiry. (43 P.S. §§ 1421-1428).

**New Jersey Laws**

**a. New Jersey False Claims Act**

The New Jersey False Claims Act (the "New Jersey FCA", N.J. S. 2A:32C-1 to 32C-17 (2008)) is comparable to the federal False Claims Act, making it unlawful for a person to knowingly make false or fraudulent claims, including to: present or cause to be presented to an employee, officer or agent of the State of New Jersey, or any contractor, grantee or other recipient of State funds, a false or fraudulent claim for payment or approval; make, use 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; conspire to defraud the State by getting a false or fraudulent claim allowed or paid; or knowingly make, use, or cause to be made or used, a false record or statement to conceal, avoid, increase or decrease an obligation to pay or transmit money or property to the State. Liability under the New Jersey FCA results in a civil penalty equal to the civil penalty under the Federal FCA (currently between \$12,537 and \$25,076) for each act constituting a violation, plus 3 times the amount of the damages sustained by the State (or 2 times the amount of damages if the person committing the violations provides full information and cooperation to the government officials investigation the false claims violations). In addition to its substantive provisions, the New Jersey FCA provides that private parties may bring an action in the name of the State for a violation of the FCA. These private parties may share in a percentage of the proceeds from an action or settlement. With some exceptions, when the government has intervened in the lawsuit, this law provides that the private party shall receive at least 15% but not more than 25% of the proceeds depending upon the extent to which the person substantially contributed to the prosecution of the action. When the government does not intervene, the private party is entitled to receive an amount that the court decides is reasonable, which shall be not less than 25% and not more than 30%.

A civil action under the New Jersey FCA may not be brought on the later of the two following dates: (1) more than 6 years after the date on which the violation is committed; or (2) more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the New Jersey official charged with responsibility to act in the circumstances. However, in no event may an action be brought under the New Jersey FCA more than 10 years after the date on which the violation is committed. The New Jersey FCA provides protection to private parties who are discharged, demoted, suspended, threatened, harassed, denied promotion or in any other manner discriminated against in the terms and conditions of their employment as a result of their disclosure of information to the State or furtherance of an action under the New Jersey FCA. Remedies include reinstatement with comparable seniority as the party would have had but for the discrimination, two times the amount of any back pay, interest on any back pay and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

**b. New Jersey Medical Assistance and Health Services Act – Criminal Penalties and Civil Remedies**

The New Jersey Medical Assistance and Health Services Act contains provisions relating to acts prohibited by persons receiving medical assistance benefits and providers receiving medical assistance payments. The law makes it a crime for a provider to knowingly receive medical assistance payments to which he is not entitled or in a greater amount than entitled. It is also a crime for a provider or other person or entity to knowingly and willfully make materially false statements in applying for payments under the medical assistance program or for use in determining rights to such payment, to conceal or fail to disclose the occurrence of an event affecting the initial or continued right to a payment with the fraudulent intent to secure payments not authorized or in a greater amount than authorized under the law, or to knowingly and willfully convert payments to a use other than the use and benefit of the provider or other person. It is also a crime for a provider or other person to solicit, offer or receive a kickback, rebate or bribe in connection with the receipt of a payment under the Act or the furnishing of items or services for which payment is or may be made or whose cost is or may be reported in order to obtain such payments (except for lawful discounts or price reductions and payments to an employee under a bona fide employment relationship). Finally, it is a crime to knowingly and willingly make or induce, or seek to do so, the making of false statements or representations of material facts with respect to the conditions or operations of an institution or facility in order for it to qualify for certification or

recertification of a hospital and thereby entitled to receive medical assistance payments. Violations can result in criminal penalties including fines up to \$11,000 and imprisonment of up to three years. (N.J.S. 30:4D-17 (a)-(d)).

In addition, various civil remedies are available to the government under the Medical Assistance and Health Services Act. Persons or entities committing the crimes described in the previous paragraph are liable for civil penalties (recoverable in an administrative proceeding) including all of the following: interest on the excess payments, three times the amount of the payments unlawfully obtained and \$5,000 - \$10,000 per excessive claim for payments. Persons or entities who obtain medical assistance payments in amounts in excess of that to which they are entitled, but without intent to violate the Act, may be subject to a civil penalty in the amount of interest on the excess payments. Finally, the director of the Medical Assistance Program has the authority to suspend, debar or disqualify for good cause any provider (or an agent, employee or contractor of one) or other person or entity participating in the Medicaid program. (N.J.S. 30:4D-7.h; 30:4D-17 (e) – (i); 30: 4D-17.1.a).

**c. Health Care Claims Fraud Act**

This law makes it a crime for licensed health care practitioners and persons who are not practitioners to knowingly or recklessly commit health care claims fraud in the course of providing professional services. Conviction under the Health Care Claims Fraud Act subjects the person to criminal penalties imprisonment of up to ten years, as permitted under New Jersey law, fines of up to five times the pecuniary benefit received or sought and license or certificate forfeiture. Health care claims fraud includes the making of false or misleading statements in, or omission of material facts from, a record, bill, claim or other document submitted for payment or reimbursement for health care services. (N.J.S. 2C:21-4.2 and 4.3; N.J.S. 2C:51-5).

**d. New Jersey Insurance Fraud Prevention Act**

This law makes it unlawful for a person to knowingly commit insurance fraud or assist or cause others to commit insurance fraud in New Jersey. A person or a practitioner violates this act if he (1) Presents or causes to be presented any written or oral statement as part of, or in support of or opposition to, a claim for payment or other benefit pursuant to an insurance policy knowing that the statement contains any false or misleading information concerning any fact or thing material to the claim; or (2) Prepares or makes any written or oral statement that is intended to be presented to any insurance company, the Unsatisfied Claim and Judgment Fund or any claimant thereof in connection with, or in support of or opposition to any claim for payment or other benefit pursuant to an insurance policy or the "Unsatisfied Claim and Judgment Fund Law," P.L.1952, c.174 (C.39:6-61 et seq.), knowing that the statement contains any false or misleading information concerning any fact or thing material to the claim; or (3) Conceals or knowingly fails to disclose the occurrence of an event which affects any person's initial or continued right or entitlement to (a) any insurance benefit or payment or (b) the amount of any benefit or payment to which the person is entitled; (4) Prepares or makes any written or oral statement, intended to be presented to any insurance company or producer for the purpose of obtaining an insurance policy, knowing that the statement contains any false or misleading information concerning any fact or thing material to an insurance application or contract; or (5) Conceals or knowingly fails to disclose any evidence, written or oral, which may be relevant to a finding that a violation of this act has or has not occurred. A person or practitioner may also violate this act if he knowingly assists, conspires with, or urges any person or practitioner to violate any of the provisions of this act; he knowingly benefits, directly or indirectly, from the proceeds derived from a violation of this act; is the owner, administrator or employee of any hospital and allows the use of the facilities of the hospital by any person in furtherance of a scheme or conspiracy to violate any of the provisions of this act; and if, for pecuniary gain, for himself or another, he directly or indirectly solicits any person or practitioner to engage, employ or retain either himself or any other person to manage, adjust or prosecute any claim or cause of action, against any person, for damages for negligence, or, for pecuniary gain, for himself or another, directly or indirectly solicits other persons to bring causes of action to recover damages for personal injuries or death, or for pecuniary gain, for himself or another, directly or indirectly solicits other persons to make a claim for personal injury protection benefits pursuant to P.L.1972, c.70 (C.39:6A-1 et seq.) Violation of this law may result in civil penalties, civil administrative actions and criminal prosecution. (N.J.S.A 17:33A-1 et seq)

**e. Conscientious Employee Protection Act**

This law prohibits retaliation against an employee who discloses to a supervisor or public body an activity, policy or practice by an employer that the employee reasonably believes violates a law, rule or regulation, or is fraudulent or criminal. It also prohibits retaliation against an employee who provides information or testimony to a public body investigating a violation of law, rule or regulation by an employer, or who objects to or refuses to participate in any activity, policy or practice that the employee reasonably believes is in violation of a law, rule or regulation, or is fraudulent, or incompatible with a clear mandate of public policy. The law provides a private right of action for aggrieved employees with available remedies including injunctive relief, reinstatement, lost wages and benefits and other compensatory damages; a defendant may also be subject to civil fines and punitive damages. An employer may, however, recover attorneys fees and costs if an employee is found to have brought an action without basis in law or fact. (N.J.S. 34:19-1 to 19-14.).

**f. Reporting Medicaid or Insurance Fraud**

New Jersey Medicaid or insurance fraud may be reported to the New Jersey Medicaid Fraud Division at 888-937-2835 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>.)

## Delaware Law

### **a. Delaware False Claims and Reporting Act**

The Delaware False Claims and Reporting Act (the “Delaware FCRA”, 6 Del. C. 1201-1209) is comparable to the federal False Claims Act, making it unlawful for a person to knowingly: present or cause to be presented to the government of the State of Delaware (including, for example, departments, political subdivisions, state and municipal authorities and State-funded entities) a false or fraudulent claim for payment or approval; make, use or cause to be made or used a false record or statement to get a false or fraudulent claim paid or approved; conspire to defraud the government by getting a false or fraudulent claim allowed or paid; or knowingly make, use, or cause to be made or used, a false record or statement to conceal, avoid, increase or decrease an obligation to pay or transmit money or property to the government. Liability under the Delaware False Claims and Reporting Act results in a civil penalty of between \$12,537 and \$25,076 for each act constituting a violation, plus 3 times the amount of the damages sustained by the government (or 2 times the amount of damages if the person committing the violations provides full information and cooperation to the government officials investigating the false claims violations). While the Delaware FCRA imposes liability only when the claimant acts “knowingly,” it does not require that the person submitting the claim have actual knowledge that the claim is false. A person who acts in reckless disregard or in deliberate ignorance of the truth or falsity of the information, also can be found liable under the Act.

In addition to its substantive provisions, the Delaware FCRA provides that private parties who are “affected” persons, entities or organizations may bring an action on behalf of the State government for a violation of the FCRA. These private parties may share in a percentage of the proceeds from an action or settlement. With some exceptions, when the government has intervened in the lawsuit, this law provides that the private party shall receive at least 15% but not more than 25% of the proceeds of the Delaware FCRA action depending upon the extent to which the person substantially contributed to the prosecution of the action. When the government does not intervene, the private party is entitled to receive an amount that the court decides is reasonable, which shall be not less than 25% and not more than 30%.

A civil action under the Delaware FCRA may not be brought on the later of the two following dates: (1) more than 6 years after the date on which the violation is committed; or (2) more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the Delaware official charged with responsibility to act in the circumstances. However, in no event may an action be brought under the Delaware FCRA more than 10 years after the date on which the violation is committed. The Delaware FCRA provides protection to private parties who are discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of their employment as a result of their furtherance of an action under the Delaware FCRA. Remedies include reinstatement with comparable seniority as the party would have had but for the discrimination, two times the amount of any back pay, interest on any back pay and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys’ fees.

## New York State Laws

New York State False Claim Laws fall under the jurisdiction of both New York’s civil and administrative laws as well as its criminal laws. Some apply to recipient false claims and some apply to provider false claims. The majority of these statutes are specific to healthcare or Medicaid. Yet some of the “common law” crimes apply to areas of interaction with the government and so are applicable to health care fraud and will be listed in this section.

### A. CIVIL AND ADMINISTRATIVE LAWS

#### 1) New York False Claims Act (State Finance Law §§187-194)

The New York False Claims Act is similar to the Federal False Claims Act. It imposes penalties and fines upon individuals and entities who knowingly file false or fraudulent claims for payment from any state or local government, including health care programs such as Medicaid. It also has a provision regarding reverse false claims similar to the federal FCA such that a person or entity will be liable in those instances in which the person obtains money from a state or local government to which he may not be entitled and then uses false statements or records in order to retain the money.

The penalty for filing a false claim is six to twelve thousand dollars per claim plus three times the amount of the damages which the state or local government sustains because of the act of that person. In addition, a person who violates this act is liable for costs, including attorneys’ fees, of a civil action brought to recover any such penalty.

The Act allows private individuals to file lawsuits in state court, just as if they were state or local government parties, subject to various possible limitations imposed by the NYS Attorney General or a local government. If the suit eventually concludes with payments back to the government, the person who started the case can recover twenty-five to thirty percent of the proceeds if the government did not participate in the suit, or fifteen to twenty-five percent if the government did participate in the suit.

#### 2) Social Services Law, Section 145-b - False Statements

It is a violation to knowingly obtain or attempt to obtain payment for items or services furnished under any Social Services program, including Medicaid, by use of a false statement, deliberate concealment or other fraudulent scheme or device. The state or the local Social Services district may recover three times the amount incorrectly paid. In addition, the Department of Health may impose a civil

penalty of up to ten thousand dollars per violation. If repeat violations occur within five years, a penalty of up to thirty thousand dollars per violation may be imposed if the repeat violations involve more serious violations of Medicaid rules, billing for services not rendered, or providing excessive services.

### 3) Social Services Law, Section 145-c - Sanctions

If any person applies for or receives public assistance, including Medicaid, by intentionally making a false or misleading statement, or intending to do so, the needs of the individual or that of his family shall not be taken into account for the purpose of determining his or her needs or that of his family for six months if a first offense, for twelve months if a second offense (or if benefits wrongfully received are at least one thousand dollars but not more than three thousand nine hundred dollars), for eighteen months if a third offense (or if benefits wrongfully received are in excess of three thousand nine hundred dollars) and five years for any subsequent occasion of any such offense.

## B. CRIMINAL LAWS

### 1) Social Services Law, Section 145 - Penalties

Any person who submits false statements or deliberately conceals material information in order to receive public assistance, including Medicaid, is guilty of a misdemeanor.

### 2) Social Services Law, Section 366-b - Penalties for Fraudulent Practices.

- a. Any person who obtains or attempts to obtain, for himself or others, medical assistance by means of a false statement, concealment of material facts, impersonation or other fraudulent means is guilty of a class A misdemeanor.
- b. Any person who, with intent to defraud, presents for payment a false or fraudulent claim for furnishing services, knowingly submits false information to obtain greater Medicaid compensation, or knowingly submits false information in order to obtain authorization to provide items or services is guilty of a class A misdemeanor.

### 3) Penal Law Article 155 - Larceny

The crime of larceny applies to a person who, with intent to deprive another of his property, obtains, takes or withholds the property by means of trick, embezzlement, false pretense, false promise, including a scheme to defraud, or other similar behavior. This statute has been applied to Medicaid fraud cases.

- a. Fourth degree grand larceny involves property valued over \$1,000. It is a class E felony.
- b. Third degree grand larceny involves property valued over \$3,000. It is a class D felony.
- c. Second degree grand larceny involves property valued over \$50,000. It is a class C felony.
- d. First degree grand larceny involves property valued over \$1 million. It is a class B felony.

### 4) Penal Law Article 175 - False Written Statements

Four crimes in this Article relate to filing false information or claims and have been applied in Medicaid fraud prosecutions:

- a. §175.05 - Falsifying business records involves entering false information, omitting material information or altering an enterprise's business records with the intent to defraud. It is a class A misdemeanor.
- b. §175.10 - Falsifying business records in the first degree includes the elements of the §175.05 offense and includes the intent to commit another crime or conceal its commission. It is a class E felony.
- c. §175.30 - Offering a false instrument for filing in the second degree involves presenting a written instrument, including a claim for payment, to a public office knowing that it contains false information. It is a class A misdemeanor.
- d. §175.35 - Offering a false instrument for filing in the first degree includes the elements of the second degree offense and must include an intent to defraud the state or a political subdivision. It is a class E felony.

### 5) Penal Law Article 176 - Insurance Fraud

This law applies to claims for insurance payments, including Medicaid or other health insurance and contains six crimes

- a. Insurance Fraud in the 5th degree involves intentionally filing a health insurance claim knowing that it is false. It is a class A misdemeanor.
- b. Insurance fraud in the 4th degree is filing a false insurance claim for over \$1,000. It is a class E felony.
- c. Insurance fraud in the 3rd degree is filing a false insurance claim for over \$3,000. It is a class D felony.
- d. Insurance fraud in the 2nd degree is filing a false insurance claim for over \$50,000. It is a class C felony.
- e. Insurance fraud in the 1st degree is filing a false insurance claim for over \$1 million. It is a class B felony.
- f. Aggravated insurance fraud is committing insurance fraud more than once. It is a class D felony.

### 6) Penal Law Article 177 - Health Care Fraud

This statute, enacted in 2006, applies to health care fraud crimes. It was designed to address the specific conduct by health care providers who defraud the system including any publicly or privately funded health insurance or managed care plan or contract, under

which any health care item or service is provided. Medicaid is considered to be a single health plan under this statute. This law primarily applies to claims by providers for insurance payment, including Medicaid payment and it includes six crimes.

- a. Health care fraud in the 5th degree – a person is guilty of this crime when, with intent to defraud a health plan, he or she knowingly and willfully provides materially false information or omits material information for the purpose of requesting payment from a health plan. This is a class A misdemeanor.
- b. Health care fraud in the 4th degree – a person is guilty of this crime upon filing such false claims on more than one occasion and annually receives more than three thousand dollars. This is a class E felony.
- c. Health care fraud in the 3rd degree – a person is guilty of this crime upon filing such false claims on more than one occasion and annually receiving over ten thousand dollars. This is a class D felony.
- d. Health care fraud in the 2nd degree - a person is guilty of this crime upon filing such false claims on more than one occasion and annually receiving over fifty thousand dollars. This is a class C felony.
- e. Health care fraud in the 1st degree - a person is guilty of this crime upon filing such false claims on more than one occasion and annually receiving over one million dollars. This is a class B felony.

#### New York State False Claim Act (State Finance Law §191)

The New York State False Claim Act also provides protection to qui tam relators (individuals who commence a False Claims action) who are discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of their employment as a result of their furtherance of an action under the Act. Remedies include reinstatement with comparable seniority as the qui tam relator would have had but for the discrimination, two times the amount of any back pay, interest on any back pay and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

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