



## **Federal Deficit Reduction Act of 2005-Section 6032**

### **Section 1: Applicability**

This policy applies to Partners for Kids and Families (PFKF) PFKF employees, interns, and volunteers (referred to going forward as “PFKF representatives”), as well as all contractors and agents of PFKF.

For purposes of Section 6032 of the Federal Deficit Reduction Act of 2005, a “contractor” or “agent” includes any contractor, subcontractor, agent or other person which or who, on behalf of PFKF, furnishes, or otherwise authorizes the furnishing of, Medicaid health care items or services, performs billing or coding functions, or is involved in the monitoring of health care provided by PFKF.

### **Section 2: Applicable Federal and State Anti-Fraud and False Claims Laws**

Section 6032 of the Federal Deficit Reduction Act of 2005 requires certain health care organizations, including PFKF, to assist in preventing, detecting, and addressing fraud, waste, and abuse in federal health care programs by taking certain actions, including having a policy in place to describe provisions of certain federal and state anti-fraud and false claims laws. The applicable laws and a summary of each are as follows:

- a) **Federal False Claims Act (FCA):** The FCA prohibits a person or entity from “knowingly” presenting or causing to be presented a false or fraudulent claim for payment approval to the federal government, and from “knowingly” making, or using or causing to be made a false record or statement to get a false or fraudulent claim paid or approved by the federal government. The FCA also prohibits a person or entity from conspiring to defraud the government by getting a false or fraudulent claim allowed or paid and knowingly or improperly retaining an overpayment. These prohibitions extend to federally funded health care programs such as Medicaid.

The FSA broadly defines “knowingly” to include (1) actual knowledge of the information; (2) acting in deliberate ignorance of the truth or falsity of the information; or (3) acting in reckless disregard of the truth or falsity of the information. The law provides that a specific intent to defraud is not required to prove an FCA violation.

A person or entity found guilty of violating the FCA will be liable for civil monetary penalties not less than \$5,500 per false claim plus *three times* the amount of the damages sustained by the federal government. The amount of the false claim penalty is periodically adjusted for inflation according to a federal formula.

Under the Affordable Care Act, the law was amended to, among other things, extend liability for “reverse false claims,” or knowingly concealing or avoiding or decreasing an obligation to pay or transmit money or property to the federal government. Thus, overpayments from federally funded health care programs not returned within the timeframes may create FCA liability. In addition, violating the FCA can provide the basis to subject the person or entity to exclusion from participation in Medicare, Medicaid and other federal health care programs.

Private persons (called “relators” or “whistleblowers”) are permitted to bring civil actions for violations of the FCA on behalf of the United States. The government, after reviewing the complaint and supporting evidence, may decide either to take over the action, or decline to do so, in which case the relator may conduct the action. If a case is successful, the relator is entitled to receive a percentage of the monies collected.

“Relators” or “whistleblowers” are granted protection under the FCA. Any whistleblower who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against by their employer because of reporting violations of the FCA will be entitled under the law to remedies, including reinstatement with seniority, double pay back, interest, special damages sustained because of discriminatory treatment, and attorneys’ fees and costs.

- b) Federal Program Fraud Civil Remedies Act (“FPFCRA”): The FPFCRA 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) when the person or entity “knows or has reason to know” that the claim is (1) false, fictitious or fraudulent, (2) includes or is supported by any written statement which asserts a material fact that is false, fictitious, or fraudulent, (3) includes or is supported by any written statement that (a) omits a material fact, (b) is false, fictitious, or fraudulent because of the omission, and (c) the person or entity has a duty to include such material fact, or (4) is for the provision of items or services which the has not provided as claimed.

Similar to the FCA, the FPFCRA broadly defines the term “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 FPFCRA provides that a specific intent to defraud is not required to prove that the law has been violated.

The FPFCRA provides for civil penalties, beginning at no less than \$5,500 for each false claim paid by the government, and, in certain circumstances, an assessment of *twice* the amount of each claim. The amount of the false claim penalty is periodically adjusted for inflation according to a federal formula.

- c) New Jersey False Claims Act (“NJFCA”): The NJFCA is a state law that prohibits, among other things, knowingly presenting or causing to be presented to an employee,

officer or agent of the State of New Jersey, or to any contractor, grantee, or other recipient of State funds, a false or fraudulent claim for payment or approval, or knowingly making, using, or causing to be made or used a false record or statement to get a false or fraudulent claim paid or approved by the State. The NJFCA also prohibits conspiring to defraud the State by getting a false or fraudulent claim approved or paid by the State.

The NJFCA defines “knowingly” as having actual knowledge of the information, acting in deliberate ignorance of the truth or falsity of the information, or acting in reckless disregard of the truth or falsity of the information. No proof of specific intent to defraud is required. Acts occurring by innocent mistake or as a result of mere negligence will be a defense to an action under the NJFCA.

A person who has violated the NJFCA will be jointly and severally liable to the State of New Jersey for a civil penalty of not less than and not more than the civil penalty allowed under the federal FCA, for each false or fraudulent claim, plus three times the amount of damages which the State sustains (i.e., treble damages). The court may reduce the treble damages to not less than twice the amount of damages the State sustains if the court finds certain factors are met.

Violations of the NJFCA also give rise to liability under the Medical Assistance and Health Services Act (see below),

A person may bring a civil action for a violation of the NJFCA for the person and for the State of New Jersey. The person must also serve the State Attorney General. The individual is entitled to at least 15% of any proceeds recovered.

The NJFCA has whistleblower protections similar to the ones contained in the FCA. A PFKF employee who is discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against in the terms and conditions of employment by their employer because of lawful acts done in furtherance of an action under the NJFCA, may be entitled to special protection. The protection afforded may include reinstatement with the same seniority status such PFKF employee would have had, but for the discrimination, two times the amount of back pay, interest on the back pay, and/or compensation for any special damages sustained because of the discrimination, including litigation costs and reasonable attorneys’ fees.

- d) Medical Assistance and Health Services Act (“MAHSA”): The MAHSA allows for the imposition of criminal fines, terms of imprisonment, and civil penalties for violations involving the submission of claims for payment under the Medical Assistance Program (e.g. Medicaid), specifically when an individual or entity (1) knowingly and willfully makes or causes to be made any false statement or false representation of a material fact in any claim form in order to receive payment, (2) knowingly and willfully makes or causes to be made any written or oral false statement for use in determining such payment, or (3) conceals or fails to disclose the occurrence of an event which affects the right to receive such a payment. Penalties may also be imposed if false statements or representations of a material fact are made in connection with the conditions or operations of any institution during an initial or recertification process entitling the

facility to payments under the Medical Assistance Program. Under the MAHSA, it is also unlawful for an individual or entity to solicit, offer or receive a kickback, rebate or bribe in connection with the furnishing of items or services for which payment is made or the furnishing of items or services whose cost is or may be reported to obtain benefits or payments under Medical Assistance Program.

**Criminal Penalties (NJSA §30:4D-17(a) – (d)):** The MASHA includes criminal penalties for individuals engaged in fraud or other criminal violations relating to Medicaid funded programs discussed above. The criminal penalties range from fines of \$3,000 to \$10,000, terms of imprisonment for 1 year to 3 years, or a combination of both fines and imprisonment.

**Civil Penalties (NJSA §30:4D-7(h); NJSA §30:4D-17(e) – (i); NJSA §30:4D-17.1(a)):** MAHSA civil penalties include: (1) payment of interest on the amount of the excess benefits or payments at the maximum legal rate in effect on the date the payment was made for the period from the date upon which the payment was made to the date upon which repayment is made to the State of New Jersey; (2) payment of an amount not to exceed *three times* the amount of such excess benefits or payments; and (3) payment of not less than and not more than the civil monetary penalty allowed under the federal FCA for each excessive claim for assistance, benefits or payments.

The director of the New Jersey Medicaid program may also take certain actions against individuals and entities found to be in violation of MAHSA. Specifically, the director may suspend, debar or disqualify, for good cause, any provider or may suspend, debar or disqualify, for good cause, any individual or entity from all healthcare programs funded in whole or in part by the New Jersey Division of Medical Assistance and Health Services.

Additionally, if an individual or entity fails to respond within ten (10) days to any order of the director, or their designee, requiring payment or repayment of any amount found to be due under this law, the director may issue certificate to the clerk of the Superior Court of New Jersey stating that the person or entity is indebted to the State for the payment of the outstanding amount.

- e) Health Care Claims Fraud Act: The HCCFA makes it a crime to make a false, fictitious or fraudulent or misleading statement of material fact is knowingly or recklessly submitted (or is attempted to be submitted) or a material fact is omitted from any record, bill, claim or other document in connection with payment or reimbursement for health care services by either a licensed health care practitioner or an unlicensed person. In addition to a range of criminal penalties allowed by law, the penalty for each violation of the HCCFA is a fine of up to five times the monetary amount obtained or sought.

A health care practitioner may also be subject to additional penalties for a violation of the HCCFA, including but not limited to, suspension or forfeiture of their license.

### Section 3: Conscientious Employee Protection Act (CEPA)

Under CEPA, employers are prevented from taking any retaliatory action against a PFKF employee who discloses (or threatens to disclose) to a supervisor or to a public body any activity,

policy or practice of the employer that the employee reasonably believes is fraudulent or criminal and that may defraud an individual or governmental entity, among others, or who participates in an investigation of violations. In addition, the law protects a PFKF employee who objects or refuses to participate in such activity, policy or practice. Specific protection is also given to licensed or certified health care professionals who object to or refuse to participate in any activity, policy or practice that the employee reasonably believes constitutes improper quality of care.

Any PFKF representative who is found to have engaged in any retaliatory action against a PFKF employee will be subject to disciplinary action up to and including termination of employment.

#### Section 4: Procedures for Detecting Fraud, Waste, and Abuse

PFKF will educate all PFKF representatives, contractors, and agents regarding procedures for detecting fraud, waste, and abuse.

All PFKF representatives, contractors, and agents must, as a condition of continued employment or engagement with PFKF, strictly adhere to the requirements of all federal and state laws prohibiting fraud, waste, and abuse. Under federal and state laws, all PFKF representatives, contractors, and agents have an affirmative duty to prevent, detect, and report fraudulent behavior.

Each PFKF representative has multiple options to report a concern or violation of PFKF's Corporate Compliance Plan. They may report to the Corporate Compliance Officer, their immediate supervisor or to another member of the PFKF Management Team. If a PFKF representative other than the Corporate Compliance Office receives the report, they must then provide the report to the Corporate Compliance Officer. Reports may also be submitted through a third-party company which administers an anonymous and confidential reporting service. Reports can be submitted 24 hours a day by any PFKF representative using a [secure on-line form](#) or toll-free number (1-833-480-0010). The information conveyed is then made available to the Corporate Compliance Officer and/or Executive Director.

#### Section 5: Distribution and Acknowledgement

PFKF will make this policy available to all PFKF representatives as well as its contractors and agents. When required by PFKF, PFKF representatives, contractors and agents must sign an acknowledgement form acknowledging the receipt of this policy.

#### Section 6: Certification

If and to the extent required by the State of New Jersey, PFKF will certify to the State that, among other things, its Corporate Compliance Plan and Employee Manual incorporate the requirements of Section 6032 of the Federal Deficit Reduction Act. In certain circumstances, PFKF may be required to submit documentation to support the answers provided in the certification. PFKF also may be subject to onsite reviews conducted by the state or federal government to verify compliance.