

# **COOPER UNIVERSITY HEALTH CARE**

## **Compliance Policies and Procedures**

Supersedes: Compliance Program  
Appendix T

Section: Compliance Program

Reviewed: 03/20/2017

Subject: 12.103 - False Claims Act, Education  
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**Notice: The official version of this Policy is contained in Cooper Policy Network and may have been revised since the document was printed.**

I. PURPOSE:

A. To satisfy the requirements of Section 6032 of the Deficit Reduction Act of 2005 by setting forth required information concerning:

1. The federal False Claims Act and other laws pertaining to civil and criminal penalties for false claims;
2. New Jersey False Claims laws;
3. Protections against reprisals or retaliation for those who report wrongdoing; and
4. Cooper University Health Care's (CUHC) procedures to detect and prevent fraud, waste, and abuse.

II. SCOPE:

A. This Policy applies to all CUHC employees as well contractors and agents of CUHC.

III. BACKGROUND:

A. The Deficit Reduction Act of 2005 (DRA)

1. Section 6032 of the DRA requires certain governmental, for-profit and non-profit providers and other entities that receive Medicaid funding to:
  - a. Establish written policies for all employees and contractors or agents that provide detailed information about federal and New Jersey false claims law as well as fraud, waste, and abuse in health care programs (including Medicaid, Medicare and New Jersey FamilyCare);
  - b. Establish policies for detecting and preventing fraud, waste, and abuse; and
  - c. Provide employees with a specific discussion of their right to be protected as whistleblowers.

B. The False Claims Act

1. The False Claims Act (FCA), 31 U.S.C. §§ 3729-3733, makes any person or entity that knowingly submits a false or fraudulent claim for payment of United States government funds liable for significant penalties and fines. These sanctions include a penalty of up to three times the government's damages, civil penalties ranging from \$10,957 to \$21,916 per false claim, and exclusion from

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the Medicare program. This law applies generally to federally-funded programs, including health care programs such as Medicaid and Medicare.

2. The FCA also provides that a private person with knowledge of a false claim may bring a civil action on behalf of the United States government to recover funds it has paid as a result of that false claim. The government will investigate the individual's allegations and may or may not choose to join in the lawsuit. If the government chooses to join, it assumes responsibility for all of the subsequent expenses associated with the lawsuit. If the lawsuit is ultimately successful, the court may award the individual who initially brought the suit a percentage of the funds recovered. That percentage is lower when the government joins in the action. Regardless of whether the government participates, the court may reduce the individual's share of the proceeds if it finds that he or she planned and initiated the false claim violation. If the individual is convicted of criminal conduct related to his or her role in the preparation or submission of the false claim, the individual will be dismissed from the civil action without receiving any portion of the proceeds.
  3. The FCA also contains a provision that protects a private person from retaliation by his or her employer for participation in a false claims action. That provision applies to any employee who is discharged, demoted, suspended, threatened, harassed, or discriminated against because of the employee's lawful conduct in furtherance of a false claim action.
- C. The Program Fraud Civil Remedies Act (PFCRA) provides for administrative remedies against those who knowingly submit false claims and statements. Under the PFCRA, a violation may result in a maximum penalty of \$10,957 per claim, plus an assessment of up to twice the amount of each false or fraudulent claim.
- D. New Jersey False Claims Laws
1. The New Jersey Medical Assistance and Health Services Act. Criminal Penalties, N.J.S. 30:4D-17(a)-(d)
    - a. This statute provides criminal penalties for individuals and entities engaging in fraud or other criminal violations relating to Title XIX-funded programs. They include: (a) fraudulent receipt of payments or benefits: fine of up to \$10,000, imprisonment for up to 3 years, or both; (b) false claims, statements or omissions, or conversion of benefits or payments: fine of up to \$10,000, imprisonment for up to 3 years, or both;

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(c) kickbacks, rebates and bribes: fine of up to \$10,000, imprisonment for up to 3 years, or both; and (d) false statements or representations about conditions or operations of an institution or facility to qualify for payments: fine of up to \$3,000, or imprisonment for up to 1 year, or both.

2. Civil Remedies, N.J.S. 30:4D-17(e)-(i); N.J.S. 30:4D-17.1.a

- a. In addition to the criminal sanctions above, violations of N.J.S. 30:4D(a)-(d) can also result in the following civil sanctions: (a) unintentional violations: recovery of overpayments and interest; (b) intentional violation: recovery of overpayments, interest, up to triple damages, and up to \$2,000 for each false claim. Recovery actions can be maintained against any individual or entity responsible for or receiving the benefit or possession of the incorrect payments.
- b. In addition to recovery actions, violations can result in the exclusion of an individual or entity from participation in all health care programs funded in whole or in part by the N.J. Division of Medical Assistance and Health Services. Recovery and exclusion can also be obtained as part of a criminal prosecution.

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

This statute provides criminal penalties for health care claims fraud, with penalties that vary according to intent:

- a. A practitioner who knowingly commits health care fraud in the course of providing professional services is guilty of a crime of the second degree, and is subject to a fine of \$150,000.00 or five times the monetary benefits obtained or sought to be obtained as well as permanent forfeiture of his license;
- b. A practitioner who recklessly commits health care fraud in the course of providing professional services is guilty of a crime of the third degree, and is subject to a fine of up to five times the pecuniary benefit obtained or sought to be obtained and the suspension of his license for up to one year;
- c. A person who is not a practitioner subject to paragraph a. or b. above (for example, someone who is not licensed, registered or certified by an appropriate State agency as a health care professional) is guilty of a

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- crime of the third degree if that person knowingly commits health care fraud. Such a person is guilty of a crime of the second degree if that person knowingly commits five or more acts of health care claims fraud, and the aggregate monetary benefit obtained or sought to be obtained is at least \$1,000. In addition to all other criminal penalties allowed by law, such a person may be subject to a fine of up to five times the monetary benefit obtained or sought to be obtained; and
- d. A person who is not a practitioner subject to paragraph a. or b. above is guilty of a crime of the fourth degree if that person recklessly commits health care claims fraud. In addition to all other criminal penalties allowed by law, such a person may be subject to a fine of up to five times the monetary benefit obtained or sought to be obtained.
4. The Uniform Enforcement Act, N.J.S. 45:1-21. b
- a. A licensure board within the N.J. Division of Consumer Affairs “may refuse to admit a person to an examination or may refuse to issue or may suspend or revoke any certificate, registration or license issued by the board” who as engaged in “dishonesty, fraud, deception, misrepresentation, false promise or false pretense,” or has “[a]dvertised fraudulently in any manner.”
5. Conscientious Employee Protection Act, “Whistleblower Act”, N.J.S.A. 34:19-4
- a. New Jersey law prohibits an employer from taking any retaliatory action against an employee because the employee does any of the following:
- i. Discloses, or threatens to disclose, to a supervisor or to a public body an activity, policy or practice of the employer or another employer, with whom there is a business relationship, that the employee reasonably believes is in violation of a law, or a rule or regulation issued under the law, or, in the case of an employee who is a licensed or certified health care professional, reasonably believes constitutes improper quality of patient care;
- ii. Provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any violation of law, or a rule or regulation issued under the law by the employer or another employer, with whom there is a business relationship, or, in the case of an employee who is a licensed or

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- certified health care professional, provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into quality of patient care;
- iii. Provides information involving deception of, or misrepresentation to, any shareholder, investor, client, patient, customer, employee, former employee, retiree or pensioner of the employer or any governmental entity;
  - iv. Provides information regarding any perceived criminal or fraudulent activity, policy or practice of deception or misrepresentation which the employee reasonably believes may defraud any shareholder, investor, client, patient, customer, employee, former employee, retiree or pensioner of the employee or any governmental entity; or
  - v. Objects to, or refuses to participate in, any activity, policy or practice which the employee reasonably believes:
    - 1. Is in violation of a law, or a rule or regulation issued under the law or, if the employee is a licensed or certified health care professional, constitutes improper quality of patient care;
    - 2. Is fraudulent or criminal; or
    - 3. Is incompatible with a clear mandate of public policy concerning the public health, safety or welfare or protection of the environment.
  - b. The protection against retaliation when a disclosure is made to a public body does not apply unless the employee has brought the activity, policy or practice to the attention of a supervisor of the employee by written notice and given the employer a reasonable opportunity to correct the activity, policy or practice. However, disclosure is not required where the employee reasonably believes that the activity, policy or practice is known to one or more supervisors of the employer or where the employee fears physical harm as a result of the disclosure, provided that the situation is emergent in nature.
6. The New Jersey False Claims Act NJSA 2A:32C

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- a. A person shall be jointly and severally liable to the State for a civil penalty of not less than and not more than the civil penalty allowed under the federal False Claims Act, as may be adjusted in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub.L.101-410, for each false or fraudulent claim, plus three times the amount of damages which the State sustains, if the person commits any of the following acts:
    - i. Knowingly presents or causes to be presented to an employee, officer or agent of the State, or to any contractor, grantee, or other recipient of State funds, a false or fraudulent claim for payment or approval;
    - ii. Knowingly makes, uses, or causes to be made or used a false record or statement to get a false or fraudulent claim paid or approved by the State;
    - iii. Conspires to defraud the State by getting a false or fraudulent claim allowed or paid by the State;
    - iv. Has possession, custody, or control of public property or money used or to be used by the State and knowingly delivers or causes to be delivered less property than the amount for which the person receives a certificate or receipt;
    - v. Is authorized to make or deliver a document certifying receipt of property used or to be used by the State and, intending to defraud the entity, makes or delivers a receipt without completely knowing that the information on the receipt is true;
    - vi. Knowingly buys, or receives as a pledge of an obligation or debt, public property from any person who lawfully may not sell or pledge the property; or
    - vii. Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the State.
  - b. The New Jersey False Claims Act also provides that a private person with knowledge of a false claim may bring a civil action on behalf of the

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state to recover funds it has paid as a result of that false claim. The Attorney General will investigate the individual's allegations and may or may not choose to join in the lawsuit. If the Attorney General chooses to participate, it assumes responsibility for all of the subsequent expenses associated with the lawsuit. If the lawsuit is ultimately successful, the court may award the individual who initially brought the suit a percentage of the funds recovered.

#### IV. DEFINITIONS:

- A. An “agent” or “contractor” is a person or entity who, on behalf of CUHC, furnishes, or otherwise authorizes the furnishing of Medicaid health care items or services, performs billing or coding functions, or is involved in monitoring of health care provided by CUHC. This policy applies only to contractors associated with the provision of Medicaid health care items or services (e.g., does not apply to copy and shredding services, grounds maintenance, or gift shop services). The foregoing definition is intended to be consistent with the definition of covered contractors and agents that has been announced by CMS in its communications on the requirements of the DRA.

#### V. POLICY:

- A. It is the policy of CUHC:
1. To implement and enforce procedures to detect and prevent fraudulent or misleading claims to any government agency or payor; and
  2. To educate CUHC employees about federal, New Jersey, and CUHC's whistleblower rules.

#### VI. PROCEDURE

- A. Detecting and Responding to Fraud, Waste, and Abuse
1. CUHC's policies and procedures for detecting and preventing fraud are incorporated into its [Code of Ethical Conduct](#)
  2. In accordance with these policies and procedures, employees are encouraged to take initiative to ensure a culture of compliance by bringing to management's attention any potential violations of its Code of Ethical Conduct and any laws, including those referenced above.
- B. Reporting Fraud, Waste, and Abuse

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1. CUHC's employees, contractors, or agents may make reports by:
    - a. Informing their supervisor;
    - b. Contacting CUHC's Chief Compliance Officer (at 856-536-1303) or via email);
    - c. Calling CUHC's Compliance Hotline phone number, 1-800-500-0333; or
    - d. Submitting a report via the Compliance Hotline website.
      - i. <https://cooperhealth.alertline.com/gcs/welcome>
  2. Any information that employees provide to their supervisors, or any member of the administration or the Chief Compliance Officer, or other Compliance staff member, will be kept in confidence to the extent feasible and legal.
  3. In the event of a government investigation or lawsuit, or if the need otherwise arises for Cooper to disclose the information, such information may be disclosed at the direction of legal counsel.
  4. Cooper will not take adverse action against an employee for reasonably requesting assistance from, or reporting potential violations of law or Cooper policy to a supervisor, the Compliance Hotline, or the Compliance Office.
    - a. By reporting his or her own misconduct, however, an employee will not insulate himself or herself from potential disciplinary action for such a violation.
    - b. Employees should report concerns about possible retaliation or harassment to the Chief Compliance Officer.
    - c. Cooper will not tolerate abuse of the reporting process. Any employee who makes an intentionally false statement, or makes a report of alleged misconduct in bad faith, shall be subject to appropriate disciplinary action up to and including termination
- C. Education for CUHC Employees
1. Employees receive information concerning fraud, waste, and abuse as well as whistleblower protection policies upon orientation, annual education, and in CUHC's [Code of Ethical Conduct](#), which is given to each employee at orientation and is available online on the Cooper Policy Network.
- D. Dissemination to Contractors and Agents
1. This policy is available to all contractors and agents via CUHC's website:
    - a. [www.cooperhealth.org/about-us/education-about-false-claims-act](http://www.cooperhealth.org/about-us/education-about-false-claims-act)

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2. Information regarding the FCA and related New Jersey laws and CUHC's policies regarding fraud, waste, and abuse are included in each vendor contract.

**E. Violations of this Policy or any applicable federal or state law pertaining to false claims may be grounds for disciplinary action up to and including immediate termination of employment, as well as possible legal and / or criminal action.**

### VII. RELATED POLICIES AND PROCEDURES:

- A. [12.104 - Antitrust Rules](#)
- B. [12.106 - Auditing and Monitoring High Risk Areas](#)
- C. [12.102 - Conflicts of Interest and Commitment](#)
- D. [8.625 - Mandatory Compliance Education \(Previously 1.303\)](#)
- E. [Code of Ethical Conduct](#)
- F. [12.100 - Code of Ethical Conduct - Development, Distribution and Acknowledgement Policy](#)
- G. Additional policies and procedures as posted and updated on the Cooper Policy Network.

### VIII. REFERENCES:

- A. Section 6032 of the *Deficit Reduction Act of 2005* (Public Law 109-171) (establishes Section 1902(a)(68) of the *Social Security Act*, 42 U.S.C. § 1396(a))
- B. *The False Claims Act*, 31 U.S.C. §§ 3729, 3730, 3731, 3732, 3733
- C. *The Program Fraud Civil Remedies Act*, 31 U.S.C. §§ 3801-3812
- D. Whistleblower Protections, 31 U.S.C. § 3730(h)
- E. Pertinent New Jersey laws:
  - 1. *The New Jersey Medical Assistance and Health Services Act*, N.J.S. 30:4D-17(a)-(d)
  - 2. *Civil Remedies*, N.J.S. 30:4D-17(e)-(i); N.J.S. 30:4D-17.1.a
  - 3. *Health Care Claims Fraud Act*, N.J.S. 2C:21-4.2 & 4.3; N.J.S. 2C:51-5
  - 4. *The Uniform Enforcement Act*, N.J.S. 45:1-21. b
  - 5. *Conscientious Employee Protection Act*, "Whistleblower Act", N.J.S.A. 34:19
  - 6. *The New Jersey False Claims Act*, NJSA 2A:32C

APPROVED BY:

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