

New Jersey Early Intervention System

Policy NJEIS-15

Fraud, Waste and Abuse

Effective July 2024

(supersedes and replaces NJEIS-15 January 2022)

Relevant Statutes

- Federal False Claims Act, 31 U.S.C. § 3729 – 3733.
- Federal Program Fraud Civil Remedies Act, 31 U.S.C. § 3801 – 3812.
- New Jersey Medical Assistance and Health Services Act – Criminal Penalties, N.J.S.A. 30:4D-17(a)– (d).
- New Jersey Medical Assistance and Health Services Act – Civil Remedies, N.J.S.A. 30:4D- 7.h.; N.J.S.A. 30:4D-17(e) – (i); N.J.S.A. 30:4D-17.1.a.
- New Jersey Health Care Claims Fraud Act, N.J.S.A. 2C:21-4.2 and 4.3; N.J.S. 2C:51-5.
- New Jersey Conscientious Employee Protection Act, N.J.S.A. 34:19-1 et seq.
- New Jersey False Claims Act, N.J.S.A. 2A:32C-1 et seq.
- New Jersey Insurance Fraud Prevention Act, N.J.S.A 17:33A-1 et seq.
- Federal Deficit Reduction Act of 2005, Section 6302, 42 U.S.C. §1396(a)(68)

I. Purpose

To identify, remediate and avoid circumstances under which fraud, waste, and abuse occur within the New Jersey Early Intervention System (NJEIS).

II. Definitions

As used in NJEIS-15, the following words and terms are defined as indicated:

1. **“Abuse”** means activities by any party, including a recipient of NJEIS services, that are inconsistent with sound fiscal, business, or educational practices, which result in unnecessary costs to the NJEIS, or in reimbursement of services that are not necessary or that fail to meet professionally recognized standards for developmental/education services.
2. **“Claim”** means a request for payment related to NJEIS services.
3. **“Fraud”** means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person.
4. **“Knowing” and “knowingly”** mean that a person, with respect to information—
 - a. has actual knowledge of the information.
 - b. acts in deliberate ignorance of the truth or falsity of the information.
 - c. acts in reckless disregard of the truth or falsity of the information; or

- d. it is practically certain from the conduct of the person that a certain result will occur.

2. **“Participant”** means:

- a. A child and/or family receiving or attempting to access NJEIS services.
- b. A practitioner who provides NJEIS services, on behalf of a provider agency to a child and/or family.
- c. An agency operating under a Letter of Agreement or grant to ensure the provision of NJEIS services to children and families including service coordination; and
- d. Employees and managers working for the Department of Health, within the New Jersey Early Intervention System.
- e. “Waste” means activities involving payment or the attempt to obtain reimbursement for items or services where there was no intent to deceive or misrepresent, but the outcome of poor or inefficient claiming or inappropriate IFSP development causes unnecessary costs to the NJEIS. Waste includes any action or inaction that does not rise to the level of fraud or abuse but results in overpayments or misspent funds.

II. Policy

1. Consistent with federal and state law, the NJEIS strictly prohibits all acts that constitute fraud, waste, and abuse.
2. Every provider agency under a Letter of Agreement or Grant contract with the DOH/NJEIS shall ensure that it complies with NJEIS-15.
3. NJEIS-15 must be disseminated and made available to the agency’s employees, managers, contractors, and consultants.
4. Provider agencies, practitioners, NJEIS employees and managers, and as indicated, families must comply with NJEIS-15 and all federal and state statutes, as updated, and amended in the delivery of NJEIS services such as:
 1. Federal False Claims Act, 31 U.S.C. § 3729 – 3733.
 2. Federal Program Fraud Civil Remedies Act, 31 U.S.C. § 3801 – 3812.
 3. New Jersey Medical Assistance and Health Services Act – Criminal Penalties, N.J.S.A. 30:4D-17(a)– (d);
 4. New Jersey Medical Assistance and Health Services Act – Civil Remedies, N.J.S.A. 30:4D-7. h.; N.J.S.A. 30:4D-17(e) – (i); N.J.S.A. 30:4D-17.1. a;
 5. New Jersey Health Care Claims Fraud Act, N.J.S.A. 2C:21-4.2 and 4.3; N.J.S. 2C:51-5.
 6. New Jersey Conscientious Employee Protection Act, N.J.S.A. 34:19-1 et seq.
 7. New Jersey False Claims Act, N.J.S.A. 2A:32C-1 et seq.
 8. New Jersey Insurance Fraud Prevention Act, N.J.S.A 17:33A-1 et seq.
 9. Federal Anti-Kickback statute, 31 U.S.C. §§ 3801-3812.
 10. Section 6032 of the Deficit Reduction Act of 2005, 42 U.S.C. §1396a(a)(68).
 11. Uniform Enforcement Act, N.J.S.A. § 45:1-21(b) and (o).

12. New Jersey Consumer Fraud Act, N.J.S.A. §§ 56:8-2, 56:8- 3.1, 56:8-13, 56:8-14, and 56:8-15.

5. The Federal False Claims Act (FCA), codified at 31 U.S.C. §§ 3729-3733, is one of the federal government’s primary weapons to fight fraud against the government. The civil money penalties may be found in Table A below, of this section. The Act provides for penalties per false claim, and triple damages for anyone who knowingly submits or causes the submission of false or fraudulent claims to the United States for government funds or property.
 - a. Refer to Federal Register Volume 82, Number 22 (pages 9131-9136) for specifics.
 - b. The amount of the false claim penalty is to be adjusted periodically for inflation in accordance with a federal formula.
 - c. The Act prohibits, among other things, the submission of inappropriate claims for NJEIS services, since the NJEIS is funded, in part, by federal funds.
 - d. It also protects “whistleblowers” by providing that any employee who is subject to retaliation or discrimination by an employer in the terms and conditions of employment because the employee lawfully sought to take action or assist in taking action under this act “shall be entitled to all relief necessary to make the employee whole.” This includes reinstatement with seniority restored to what it would have been without the retaliation or discrimination, double the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the employer’s actions, including litigation costs and reasonable attorney’s fees.
6. The Federal Program Fraud Civil Remedies Act (PFCRA), codified at 31 U.S.C. §§ 3801-3812, provides federal administrative remedies for false claims and statements, including those made to federally funded health care programs.
 - a. The civil penalties for each false claim or statement, and an assessment in lieu of damages sustained by the federal government of up to double damages for each false claim for which the government makes a payment may be found in Table A, below, of this section.
 - b. The amount of the false claim penalty is to be adjusted periodically for inflation in accordance with a federal formula.
7. Under the criminal provisions of the New Jersey Medical Assistance and Health Services Act (MAHSA), codified at N.J.S.A. § 30:4D-17(a) – (d), participants in the NJEIS shall refrain from engaging in fraud or other criminal violations relating to Title XIX (Medicaid)-funded programs. Prohibited conduct includes but is not limited to:
 - a. fraudulent receipt of payments or benefits.
 - b. false claims, statements or omissions, or conversion of benefits or payments.
 - c. kickbacks, rebates, and bribes; and

- d. false statements or representations about conditions or operations of an institution or facility to qualify for payments. Participants engaging in criminal violations may be excluded from participation in Medicaid and other health care programs under N.J.S.A. § 30:4D-17.1(a).
8. Under the civil provisions of the MAHSA, codified at N.J.S.A. §§ 30:4D-7(h) and 30:4D-17(e) – (i), Participants in the NJEIS:
- a. shall repay with interest any amounts received as a result of unintentional violations.
 - b. are liable to pay up to triple damages and (under the New Jersey False Claims Act) civil money penalties per false claim when violations of the Medicaid statute are intentional, or when there is a violation of the New Jersey False Claims Act. The amounts of the civil money penalties may be found in Table A, below of this section.
 - c. Participants engaging in civil violations may be excluded from participation in Medicaid and other health care programs under N.J.S.A. § 30:4D-17.1(a).
9. Under the Health Care Claims Fraud Act (HCCFA), codified at N.J.S.A. §§ 2C:21-4.2, 2C:21-4.3 and 2C:51-5, Participants in the NJEIS shall not:
- 1. knowingly commit health care claims fraud while providing NJEIS services.
 - 2. recklessly commit health care claims fraud while providing NJEIS services; and
 - 3. commit acts of health care claims fraud as described in (a) and (b), if the commission of such acts would be performed by an individual other than the professional who provided NJEIS services (e.g., claims processing staff).
 - 4. Participants who are practitioners convicted of health care claims fraud pursuant to N.J.S.A §2C:21-4.3 or a substantially similar crime under the laws of another state or the United States shall forfeit the professional license and be forever barred from the practice of the profession, unless the court rules otherwise.
10. Under the Conscientious Employee Protection Act (CEPA), codified at N.J.S.A. §34:19- 1, et seq., provider agencies are prohibited from taking retaliatory action against employees who:
- a. disclose or threaten to disclose to a supervisor or any public agency an activity, policy or practice of the provider agency or another business with which the provider agency shares a business relationship, that the employee reasonably believes to be illegal, fraudulent and/or criminal.
 - b. provides information or testimony to any public agency investigating, hearing or inquiring into any violation of law, rule or regulation by the provider agency or another business with which the provider agency shares a business relationship; or

- c. objects to, or refuses to participate in any activity, policy, or practice which the employee reasonably believes is illegal, fraudulent, criminal, or incompatible with a clear mandate of public policy concerning the public health, safety or welfare, or protection of the environment.
11. The New Jersey False Claims Act (NJFCA), P.L. 2007, Chapter 265, codified at N.J.S.A. 2A:32C-1 through 2A:32C-17, and amending N.J.S.A. 30:4D-17(e), which was enacted on January 13, 2008, and was effective 60 days after enactment, has three parts:
- a. The main part authorizes the New Jersey Attorney General and whistleblowers to initiate false claims litigation similar to what is authorized under the Federal False Claims Act and has similar whistleblower protections.
 - b. Another part amends the New Jersey Medicaid statute to make violations of the New Jersey False Claims Act give rise to liability under N.J.S.A. 30:4D-17(e).
 - c. A third part amends the New Jersey Medicaid statute to increase the \$2000 per false claim civil penalties under N.J.S.A. 30:4D-17(e)(3) to the same level provided for under the Federal False Claims Act, which is listed under Table A, below of this section.
12. Under the New Jersey Insurance Fraud Prevention Act (IFPA), codified at 17:33-1 et. seq., a participant violates the act if they:
- a. present or cause 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.
 - b. prepare or make any written or oral statement that is intended to be presented to any insurance company, in connection with, or in support of or opposition to any 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.
 - c. conceal or knowingly fail 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.
 - d. knowingly assist, conspire with, or urge any person or practitioner to violate any of the provisions of this act.
 - e. due to the assistance, conspiring or urging of any person or practitioner, they knowingly benefit, directly or indirectly, from the proceeds derived from a violation of IFPA; or
 - f. is the owner, administrator, or employee of any hospital violating this act if they knowingly allow 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 the IFPA.

- g. The penalties for violating the IFPA include:
 - i. a civil administrative penalty of not more than \$5,000 for the first violation, \$10,000 for the second violation and \$15,000 for each subsequent violation and reasonable attorneys' fees;
 - ii. restitution to any insurance company or other person who has suffered a loss because of a violation of 17:33A-1 et seq; and/or
 - iii. possible criminal prosecution by the New Jersey Attorney General and criminal liability based on the applicable criminal statutes of New Jersey.
 - iv. In the case of a participant who is a practitioner found guilty of insurance fraud, the practitioner may also face possible suspension or revocation of the professional license consistent with N.J.S.A. §17:33A-25.

13. Under the Federal Anti-Kickback statute (AKA), codified at 42 U.S.C. § 1320a-7b, it is illegal to knowingly and willfully solicit or receive anything of value directly or indirectly, overtly or covertly, in cash or in kind, in return for referring an individual or...ordering or arranging for any good or service for which payment may be made in whole or in part under a federal health care program, including programs for children and families accessing NJEIS services through New Jersey Medicaid and New Jersey Family Care.

14. Under Section 6032 of the Deficit Reduction Act of 2005 (DRA), codified at 42 U.S.C. § 1396a(a)(68), the NJEIS and participants in the NJEIS shall follow federal and state laws pertaining to civil or criminal penalties for false claims and statements, and whistleblower protections under such laws, with respect to the role of such laws in preventing and detecting fraud, waste, and abuse in Federal health care programs, including programs for children and families accessing NJEIS services through New Jersey Medicaid and New Jersey Family Care.

15. Under the Uniform Enforcement Act (UEA), codified at N.J.S.A. § 45:1-21(b) and (o), licensed professionals are prohibited from engaging in conduct that amounts to, "dishonesty, fraud, deception, misrepresentation, false promise or false pretense" or involves false or fraudulent advertising.

16. Under the New Jersey Consumer Fraud Act (CFA), codified at N.J.S.A. §§ 56:8-2, 56:8- 3.1, 56:8-13, 56:8-14, and 56:8-15, provider agencies and the individuals working for them shall be prohibited from the unlawful use of "any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression, or omission of any material fact", with the intent that others rely upon it, in connection with the sale, rental or distribution of any product or service by the provider agency or its employees, or with the subsequent performance of that provider agency or its employees.

17. No provider agency shall submit a claim that, if processed and reimbursed, would constitute fraud, waste, or abuse, consistent with the FCA, PFCRA, MAHSA, HCCFA, CEPA, NJFCA, IFPA, AKA, DRA, UEA, CFA or as defined above in subsection II.5
18. No family shall seek payment of NJEIS services, if payment for said services would constitute fraud, waste, or abuse, consistent with the FCA, PFCRA, MAHSA, HCCFA, CEPA, NJFCA, IFPA, AKA, DRA, UEA, CFA or as defined above in subsection II.5
19. Cases believed to involve fraud, waste, or abuse shall be investigated by the appropriate staff persons within a provider agency and the results of such investigation reported to the NJEIS.
20. Cases brought to the attention of the NJEIS may be independently investigated by NJEIS staff or the NJEIS' designee, to determine the merits of alleged fraud, waste, or abuse.
21. If a family or provider agency has been adjudged to have committed fraud, waste or abuse, the NJEIS shall impose sanctions, including, but not limited to:
 1. Recoupment of funds linked to fraud, waste or abuse, together with interest and any applicable civil penalties.
 2. Suspension of services to a child (whose parents committed fraud, waste, or abuse).
 3. Disqualification of a practitioner from serving within the NJEIS.
 4. Termination of the Letter of Agreement between a provider agency and the NJEIS for the provision of early intervention services; and/or
 5. Referral of any evidence of suspected fraud or other criminal activity to the Office of the Attorney General, NJ Division of Criminal Justice. For matters involving Medicaid, the referral is to the Medicaid Fraud Control Unit (MFCU), of the Insurance Fraud Prosecutor.

TABLE A: CIVIL MONEY PENALTIES:

False Claims Act, Federal Program Fraud Civil Remedies Act, and NJ False Claims Act

U.S.C. Citation	Statute	CFR citation	DOJ penalty assessed after 12/13/2021	DOJ penalty assessed after 5/9/2022	DOJ penalty assessed after 1/30/2023	DOJ penalty assessed after 2/12/2024
31 U.S.C. 3729(a)	Federal False Claims Act	28 CFR 85.3(a)(9)	Min: \$11,803 Max: \$23,607	Min: \$12,537 Max: \$25,076	Min: \$13,508 Max: \$27,018	Min: \$13,946 Max: \$27,894

31 U.S.C. 3802(a)(1)	Federal Program Fraud Civil Remedies Act; Violations involving False Claim (per claim)	28 CFR 71.3(a)	\$11,803	\$12,537	\$13,508	\$13,946
31 U.S.C. 3802(a)(2)	Program Fraud Civil Remedies Act; Violation Involving False Statement (per statement)	28 CFR 71.3(f)	\$11,803	\$12,537	\$13,508	\$13,946
N.J.S.A. 2A:32C-1 et seq.;	**NJ False Claims Act	N/A	\$11,803	\$12,537	\$13,508	\$13,946
<p>** 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 (31 U.S.C.s.3729 et seq.), 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.</p>						

III. Policies and Procedures for Preventing and Detecting Fraud, Waste and Abuse

1. NJEIS employees and managers must be aware of, comply with, and assist provider agencies to comply with, NJEIS-15, including the procedures outlined in this section.
2. Provider agencies under a Letter of Agreement or a grant with the NJEIS must, at a minimum:
 - a. Comply with NJEIS-15, including the policies and procedures outlined in this section, and must comply with FCA, PFCRA, MAHSA, HCCFA, CEPA, NJFCA, IFPA, AKA, DRA, UEA, CFA and all federal and state statutes that prohibit practitioners and other staff from engaging in conduct that would amount to fraud, waste, or abuse.
 - b. Require staff to attend training related to the prevention and detection of fraud, waste and abuse and maintain documentation of staff attendance including but not limited to date, time, and location of the training.

- c. Review authorizations, claims, and Service Encounter Verification logs to avoid fraud, waste, and abuse.
 - d. Upon notification of alleged fraud, waste, or abuse, the provider agency must document the:
 - i. Date (s).
 - ii. Parties involved.
 - iii. Sources and basis for the allegations.
 - iv. Steps that will be taken to investigate the allegations.
 - v. Names of individuals who will be interviewed regarding the allegations.
 - vi. Projected timeline for the investigation.
 - vii. Any findings related to the investigation.
 - viii. Agency remedial action taken as a result of findings; and
 - ix. Any disciplinary actions imposed upon employees or contractors as a result of findings.
3. Within two (2) business days following notification of allegations involving fraud, waste or abuse, a provider agency must notify the NJEIS of those allegations, detailing the basis of suspicions, the status of any investigation, and the anticipated timeline for determining whether fraud, waste or abuse occurred.
4. Not more than 45 days following the date of receipt of notification of an alleged act of fraud, waste, or abuse, a provider agency must conclude its investigation and submit to the NJEIS its findings.
5. Actions taken by a provider agency, based on allegations of fraud, waste, or abuse shall be articulated in writing to the accused and copied to the NJEIS, and other relevant parties, strictly on a need-to-know basis and in accordance with all confidentiality requirements, and the Family Educational Rights Privacy Act (FERPA), 20 USC §1232g.
6. Should the NJEIS determine that it intends to investigate a case of alleged fraud, waste, or abuse that is brought to its attention, the relevant parties, including practitioners, provider agencies and staff of the provider agencies shall completely cooperate with the NJEIS in its investigation to ensure that the merits of any allegation are thoroughly and accurately explored.
7. The NJEIS shall conclude its investigation into allegations of fraud, waste, or abuse within 60 days of receipt of all documentation related to the allegations and shall issue a report to the accused and copy relevant excerpts to appropriate parties to address any sanctions imposed.
8. Any sanctions imposed by the NJEIS consistent with this policy shall be binding and shall be reviewable, on appeal, by the Grants Appeals Board or the Assistant Commissioner of Family Health Services in the NJ Department of Health. Any

evidence of suspected fraud or other criminal activity will be referred to the Office of the Attorney General, NJ Division of Criminal Justice, and evidence of potential Medicaid fraud, waste or abuse will be reported to the Office of the State Comptroller's Medicaid Fraud Division (MFD).

9. NJEIS staff and employees of providers agencies who wish to report evidence of fraud, waste, or abuse anonymously and confidentially can do so in the following manner:
 - a. Call the toll-free NJ Fraud and Abuse Hotline at 1-888-937-2835 and report any information about fraud, waste or abuse in Medicaid or NJ FamilyCare. Callers can either speak to the hotline operator or leave a message if the operator does not answer, or refer to the NJ Medicaid Fraud Division website at New Jersey Office of the State Comptroller | File a Complaint (nj.gov)
 - b. Contact the New Jersey Insurance Fraud Prosecutor Hotline at 877-55-Fraud or go online at go online at Insurance Fraud. Report It. End it. - State of New Jersey <https://www.njoag.gov/report-fraud/>