

Fraud Waste and Abuse Policy

ROWAN UNIVERSITY POLICY

Title: Fraud, Waste & Abuse Protection & Federal Deficit Reduction Act of 2005

Subject: Office of Compliance & Corporate Integrity (OCCI)

Policy No: OCCI:2013:C02

Applies: RowanSOM

Issuing Authority: Rowan President & RowanSOM Dean

Responsible Officer: Chief Audit, Compliance and Privacy Officer

Adopted: 07/01/2013

Last Revision: 01/26/2021

Last Reviewed: 01/26/2021

I. PURPOSE

This policy provides guidance to RowanSOM and other RowanSOM units and departments that bill federal or state programs for healthcare-related goods or services ("Related Healthcare Entity" or "Related Healthcare Entities") and independent contractors who may be engaged by the Related Healthcare Entity as to the requirements of the Federal Deficit Reduction Act of 2005 and fraud, waste and abuse protections contained in various state and federal laws and regulations.

II. ACCOUNTABILITY

Under the direction of the President, the Sr. Vice President for Healthcare, the Sr. Vice President and CFO, General Counsel, Dean, Associate Deans, Department Chairs, Chief Compliance & Privacy Officer, Vice President for Research, Executive Director, and the Information Security Officer shall implement and ensure compliance with this policy.

III. APPLICABILITY

This policy applies to all employees, contractors or agents of RowanSOM, its departments and units, and employees of RowanSOM departments that support the Related Healthcare Entities in their operations, including but not limited to University Procurement Services, the Office of the General Counsel, and University Finance.

IV. DEFINITIONS

The following are summaries of civil and criminal statutes enacted by the Federal Government and by the State of New Jersey which provide penalties for claims of false or fraudulent claims and broad investigative authority for federal and state authorities:

1. *Federal Civil False Claims Act* (31 U.S.C. §3729 et seq.) This statute imposes civil liability on any person who:
 - a. knowingly presents, or causes to be presented, a false or fraudulent claim, record or statement for payment or approval,
 - b. conspires to defraud the government by getting a false or fraudulent claim allowed or paid,
 - c. uses a false record or statement to avoid or decrease an obligation to pay the Government, and
 - d. other fraudulent acts enumerated in the statute.
 - i. The definition of "knowingly" in the civil False Claims Act ("FCA") includes actual knowledge as well as acts in deliberate ignorance, or in reckless disregard, of the truth or falsity of the information. No proof of specific intent to defraud is required.

- ii. The term "claim" includes a request or demand for any portion of money or property provided by the Federal Government.
- iii. Potential civil liability includes penalties of between \$5,500 and \$11,000 per claim, treble damages, and the costs of any civil action brought to recover such penalties or damages.
- iv. The Attorney General of the United States is required to investigate violations of the FCA, and may file a suit to enforce the FCA. Before filing suit the Attorney General may seek the production of documents and written answers and oral testimony pursuant to an investigative demand or demands.
- v. Private persons may also bring actions under the FCA (qui tam lawsuits) in the name of the government for violations of the FCA. When the action is filed it remains under seal for at least sixty days to provide the United States Government the opportunity to intervene in the lawsuit and prosecute, dismiss or settle the action. If the Government does not intervene, the private party who sued may proceed with the action.
- vi. If the government proceeds, the qui tam plaintiff may receive fifteen to twenty-five percent of the proceeds of a judgment or settlement. If the qui tam plaintiff proceeds, the plaintiff may receive twenty-five to thirty percent of the recovery. In addition, recovery of reasonable attorneys' fees and costs may be ordered.
- vii. If the civil action is frivolous, vexatious, or brought to harass, the plaintiff may be ordered to pay the defendant's fees and costs. If found guilty of a crime associated with the violation, the plaintiff is not entitled to any recovery.

2. *Federal Program Fraud Civil Remedies Act of 1986* (38 U.S.C. §380 et seq.)

- a. This statute establishes an administrative remedy against a person who presents, or causes to be presented, a claim or written statement that the person knows or has reason to know is false, fictitious, or fraudulent.
- b. The term "knows or has reason to know" includes actual knowledge, as well as acts in deliberate ignorance, or reckless disregard, of the truth or falsity of the information. No proof of specific intent to defraud is required.
- c. The term "claim" includes any request or demand for any money or property provided by the Federal Government.
- d. The appropriate federal department may investigate and, with the Attorney General's approval, may initiate a recovery proceeding if the claim is less than one hundred and fifty thousand dollars. In addition, civil monetary sanctions may be imposed in administrative hearings, through an assessment, in lieu of damages, of twice the amount of the original claim.

3. *The New Jersey Medical Assistance and Health Services Act* (NJSA 30:4D-17(1)-(d)).

The criminal provisions of this statute (MAHA) allow the imposition of penalties of \$10,000, and imprisonment of up to 3 years or both, upon a recipient or a provider who is convicted for willfully receiving monies to which he or she was not entitled.

4. *The New Jersey Medical Assistance and Health Services Act* (NJSA 30:4D-17(e)-(ii))

The civil provisions allow interest on the amounts of excess benefits or payments made; payment of up to three times the amount of excess benefits or payments received; and payment of \$2000 for each excessive claim for assistance, benefits or payments.

5. *The New Jersey Health Care Claims Fraud Act* (NJSA 2C:21-4.2 and 4.3; NJSA 2C:51-5))

This statute provides for the automatic permanent forfeiture of health care licenses for persons convicted of health care claims fraud for crimes of the second degree, and a one-year suspension for those convicted of health care claims fraud for crimes of the third degree. One can also be imprisoned up to 10 years for fraudulent claims submitted for professional services as well as required to pay fines up to 5 times the amount of the fraudulent claim.

6. *The New Jersey False Claims Act*

This statute amends the New Jersey Medicaid Statute, (NJSA 30:4D-17(e), and authorizes the Attorney General and/or whistleblowers to pursue false claims litigation similar to what is authorized under the Federal False Claims Act. The statute also imposes civil liability under NJSA 30:4D-17(3) for violations. In addition, the statute amends the New Jersey Medicaid Statute to increase the limits of false claim civil penalties under NJSA 30:4D-17(e)(3) to the same level provided for under the Federal False Claims Act. Penalties under the federal statute are currently between \$5,500 and \$11,000 per false claim.

7. *The New Jersey Conscientious Employee Protection Act* (NJSA 34:19-1 et seq.)

Under this statute, an employee is protected from retaliation in his/her employment if he/she: (1)

Disclosed, or threatened to disclose, to a supervisor or public body an activity, policy or practice of the employer, or of another employer with whom there is a business relationship, that the employee reasonably believed to be in violation of a law, or a rule or regulation issued under the law or (2) Provided information or testimony to a 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 (3) Objected to or refused to participate in any activity, policy or practice which the employee reasonably believed: (a) is in violation of a law, or a rule or regulation issued under the law; (b) is fraudulent or criminal; or (c) is incompatible with a clear mandate of public policy concerning the public health, safety and welfare or protection of the environment.

V. REFERENCES

1. [Rowan University Policy - Reporting Compliance and Ethics Concerns](#)
2. Fraud, Waste and Abuse Protection and the Federal Deficit Reduction Act of 2005 Summaries of Federal and State Laws as Required By Section 6032 of the Deficit Reduction Act
3. Federal Civil False Claims Act (31 U.S.C. §3729 et seq.)
4. The New Jersey Medical Assistance and Health Services Act (NJSA 30:4D-17(1)-(d))
5. The New Jersey Medical Assistance and Health Service Act MAHA (NJSA 30:4D-17(e) - (i))
6. The New Jersey Health Care Claims Fraud Act (NJSA 2C:21-4.2 and 4.3; NJSA 2C:51-5)
7. The New Jersey False Claims Act
8. The New Jersey Conscientious Employee Protection Act (NJSA 34:19-1 et seq.)

VI. POLICY

This policy provides guidance to RowanSOM and its departments that bill federal or state programs for healthcare-related goods or services ("Related Healthcare Entity" or "Related Healthcare Entities") and independent contractors who may be engaged by the Related Healthcare Entity as to the requirements of the Federal Deficit Reduction Act of 2005 and fraud, waste and abuse protections contained in various state and federal laws and regulations.

This policy supplements and amends the RowanSOM policy, Reporting Compliance and Ethics Concerns, and those sections of the RowanSOM Compliance Plan that relate to the detection and prevention of fraud, waste and abuse in the implementation of federal and state healthcare programs and protection for those who report actual or suspected wrongdoing as well as sanctions for those who forward false information.

The provisions of this policy are also intended to satisfy the requirements of the Deficit Reduction Act of 2005 (DRA), particularly Section 6032, by providing information about federal and state laws relating to liability for false claims and statements.

VII. NON-COMPLIANCE AND SANCTIONS

Any individual who violates this policy shall be subject to discipline up to and including dismissal from the University in accordance with their union and University rules. Civil and criminal penalties may be applied accordingly. Violations of this policy may require retraining and be reviewed with employee during the annual appraisal process. The Deans of each College, Vice Presidents, and University President, with the assistance of the Department of Human Resources, will enforce the sanctions appropriately and consistently to all violators regardless of job titles or level within the University and in accordance with bargaining agreements for represented employees. Any sanction costs or fines will be borne by the Department and the Department Chair or VP will determine how these funds will be assigned.

By Direction of the President:

Signature on file

Chief Audit, Compliance and Privacy Officer