



State of New Jersey
Department of Human Services
Division of Medical Assistance & Health
Services

NEWSLETTER

Volume 18 No. 10

August 2008

TO: All Providers and Other Entities - For Action
Health Maintenance Organizations - For Action

SUBJECT: Section 6032 of the Federal Deficit Reduction Act of 2005

EFFECTIVE: January 1, 2007

PURPOSE: To notify providers and other entities about Section 6032 of the Federal Deficit Reduction Act of 2005

ACTION: As a condition of receiving NJ FamilyCare/Medicaid Title XIX payments, effective January 1, 2007, all "entities" (as defined in this newsletter) were required to comply with Section 6032 of the federal Deficit Reduction Act of 2005 (referred to in this newsletter as "Section 6032"), if the total annual Title XIX payments received or made by the entity are at least \$5,000,000. If an entity furnishes items or services at more than a single location or under more than one contractual or other payment arrangement, the provisions of Section 6032 shall apply to the entity and to each of its components and locations if the aggregate Title XIX payments received or made by that entity meet the annual \$5,000,000 threshold, regardless of whether the entity submits claims for payments using one or more provider identification or tax identification numbers. For purposes of Section 6032, an entity meets the \$5,000,000 annual threshold based on Title XIX payments received or made during the previous Federal fiscal year. For example, as of January 1, 2007, an entity must comply with Section 6032 if it received or made Title XIX payments in that amount in Federal fiscal year 2006 (i.e., October 1, 2005 – September 30, 2006).

For purposes of Section 6032, the term "entity" includes a governmental agency or facility, or any organization, unit, corporation, partnership, or other business arrangement (including any Medicaid managed care organization, irrespective of the form of business structure or arrangement by which it exists), whether for-profit or not-for-profit, which receives or makes payments, under a State Plan approved under Title XIX or under any waiver of such plan, that total at least \$5,000,000 annually. A governmental component providing Medicaid health care items or services would qualify as an entity, e.g., a state, county or municipal health care facility, or a school district providing school-based health services. A government agency which merely administers all or part of the Medicaid program (e.g., managing the claims processing system or determining beneficiary eligibility), or a governmental entity that oversees a component that has a provider number (e.g., a county that oversees a particular county facility) is not considered an entity for purposes of Section 6032.

Entities covered by Section 6032 must establish written policies for all of their employees (including management), and for any contractor or agent of the entity, that provide detailed information about federal and state false claims laws. The information about these laws should include whistleblower protections under these laws, and the role of such laws in the prevention and detection of fraud, waste and abuse in Federal health care programs (including but not limited to Medicaid, Medicare and the State Children's Health Insurance Program). In order to comply with this requirement in Section 6032 for calendar year 2007, the following Federal and State statutes must be discussed in the written policies to be provided to all employees, including management, and to contractors or agents:

- 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. 30:4D-17(a) – (d)
- New Jersey Medical Assistance and Health Services Act – Civil Remedies, N.J.S. 30:4D-7.h.; N.J.S. 30:4D-17(e) – (i); N.J.S. 30:4D-17.1.a.
- Health Care Claims Fraud Act, N.J.S. 2C:21-4.2 and 4.3; N.J.S. 2C:51-5
- Conscientious Employee Protection Act, N.J.S. 34:19-1 et seq.

Although there is no mandatory format for discussing these six statutes, or the whistleblower protections that some of these statutes contain, entities may wish to use as a resource pages four through eight of the document located at the following link:

<http://www.state.nj.us/humanservices/ddd/DC54.pdf>

In addition, the New Jersey False Claims Act, P.L. 2007, Chapter 265, was enacted on January 13, 2008, and was effective 60 days after enactment. Although discussion of this new state law was not required for calendar year 2007, it will be required for calendar year 2008 compliance and in subsequent calendar years. A copy of this new law is attached.

In addition, entities covered by Section 6032 must include as part of such written policies detailed provisions regarding their own policies and procedures for detecting and preventing fraud, waste and abuse.

The entity also shall include in any employee handbook a specific discussion of the laws mentioned above, the rights of employees to be protected as whistleblowers, and the policies and procedures of the entity for detecting and preventing fraud, waste and abuse. However, there is no requirement that an employee handbook be created by the entity if none already exists.

Entities covered by Section 6032 are required to disseminate these written policies and make them readily available to all of their employees, including management, and to their contractors and agents. In addition, entities must, either by contract or otherwise: (1) require that their contractors and agents comply with these policies; and (2) request that their contractors and agents disseminate these policies and make them readily available to their employees and managers. For purposes of Section 6032, a "contractor" or "agent" includes any contractor, subcontractor, agent or other person which or who, on behalf of the entity, 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 the entity. The phrase "Medicaid health care items or services" in the previous sentence means only those Title XIX items or services that are directly related to patient care, and does not include food, fuel, landscaping and other items or services that are not directly related to patient care. Please note that it is possible that a provider may have to comply with Section 6032 in different capacities. For example, a provider might be both an "entity" in a fee-for-service context and a "contractor" in a managed care setting.

Entities should review, and revise as necessary, provisions in their written policies and employee handbooks relating to detecting and preventing fraud, waste and abuse to assure that they comply with the requirements described in this newsletter and in Section 6032. Entities without written policies and procedures for detecting and preventing fraud, waste and abuse should develop them as soon as possible. The written policies of the entity may be in a paper or electronic format.

Additional guidance may be found in the State Medicaid Director Letter from the Centers for Medicare & Medicaid Services (CMS) dated December 13, 2006, which can be accessed at <http://www.cms.hhs.gov/smdl/downloads/SMD121306.pdf>, as well as the CMS-produced list of questions and answers dated March 20, 2007, which is available at www.cms.hhs.gov/smdl/downloads/SMD032207Att1.pdf.

The Division of Medical Assistance and Health Services (DMAHS), in conjunction with other state agencies and contractors, will be monitoring compliance with Section 6032. As part of this monitoring, providers and entities subject to Section 6032 will be required to complete a form and certify that they are in compliance with Section 6032 for each calendar year, starting with calendar year 2007. In addition, a sample of providers will be asked to submit documentation to support each of their answers. Certification forms for calendar year 2007 compliance, and requests for supporting documentation, have already been sent to providers that are required to comply with Section 6032 in calendar year 2007. Furthermore, onsite reviews may be conducted to further verify compliance with Section 6032. Finally, CMS may independently determine compliance with Section 6032 through audits of entities or other means.

Any evidence of fraud, waste or abuse in Medicaid, NJ FamilyCare, General Assistance and other programs funded in whole or in part by the State can be reported to the toll-free health care Fraud and Abuse Hotline at 1-888-9-FRAUD-5 (1-888-937-2835). Any evidence of fraud, waste or abuse in Medicare or any other health care program involving only federal funds can be reported to the toll-free hotline established by the federal Office of Inspector General in the U.S. Department of Health and Human Services at 1-800-HHS-TIPS (1-800-447-8477).

Any questions about Section 6032 should be directed to Robert E. Popkin at 609-588-3052 or at Robert.Popkin@dhs.state.nj.us.

**RETAIN THIS NEWSLETTER NUMERICALLY BEHIND THE NEWSLETTER TAB
(BLUE TAB MARKED "5").**

CHAPTER 265

AN ACT establishing the “New Jersey False Claims Act,” supplementing Title 2A of the New Jersey Statutes and amending P.L.1968, c.413.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

C.2A:32C-1 Short title.

1. Sections 1 through 15 and sections 17 and 18 of this act shall be known and may be cited as the “New Jersey False Claims Act.”

C.2A:32C-2 Definitions relative to false claims.

2. As used in this act:

“Attorney General” means the Attorney General of the State of New Jersey, or his designee.

“Claim” means a request or demand, under a contract or otherwise, for money, property, or services that is made to any employee, officer, or agent of the State, or to any contractor, grantee, or other recipient if the State provides any portion of the money, property, or services requested or demanded, or if the State will reimburse the contractor, grantee, or other recipient for any portion of the money, property, or services requested or demanded. The term does not include claims, records, or statements made in connection with State tax laws.

“Knowing” or “knowingly” means, with respect to information, that a person:

- (1) has actual knowledge of the information; or
- (2) acts in deliberate ignorance of the truth or falsity of the information; or
- (3) acts 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 shall be a defense to an action under this act.

“State” means any of the principal departments in the Executive Branch of State government, and any division, board, bureau, office, commission or other instrumentality within or created by such department; and any independent State authority, commission, instrumentality or agency.

C.2A:32C-3 Civil liability for false, fraudulent claim.

3. 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, if the person commits any of the following acts:

a. 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;

b. 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;

c. Conspires to defraud the State by getting a false or fraudulent claim allowed or paid by the State;

d. 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;

e. 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;

f. 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

g. 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.

C.2A:32C-4 Reduction of treble damages by court, conditions.

4. The court may reduce the treble damages authorized under section 3 of this act to not less than twice the amount of damages which the State sustains if the court finds all of the following:

a. The person committing the violation furnished officials of the State responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the person first obtained the information;

b. The person fully cooperated with any government investigation of the violation; and

c. At the time such person furnished the State with information about the violation, no criminal prosecution, civil action, or administrative action had commenced with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation.

C.2A:32C-5 Investigation of violation; prosecution of actions.

5. a. The Attorney General shall investigate a violation of this act. If the Attorney General finds that a person has violated or is violating this act, the Attorney General may bring a civil action in State or federal court against the person. The Superior Court shall have jurisdiction over a State action brought pursuant to this act.

b. A person may bring a civil action for a violation of this act for the person and for the State. Civil actions instituted under this act shall be brought in the name of the State of New Jersey.

c. A complaint filed by a person under this act shall remain under seal for at least 60 days and shall not be served on the defendant until the court so orders. Once filed, the action may be voluntarily dismissed by the person bringing the action if the Attorney General gives written consent to the dismissal along with the reason for consenting, and the court approves the dismissal.

d. A complaint alleging a false claim filed under this act shall be so designated when filed, in accordance with the Rules Governing the Courts of the State of New Jersey. Immediately upon filing of the complaint, the plaintiff shall serve by registered mail, return receipt requested, the Attorney General with a copy of the complaint and written disclosure of substantially all material evidence and information the person possesses. The Attorney General may elect to intervene and proceed with the action on behalf of the State within 60 days after it receives both the complaint and the material evidence and information.

e. If a person brings an action under this act and the action is based upon the facts underlying a pending investigation by the Attorney General, the Attorney General may take over the action on behalf of the State. In order to take over the action, the Attorney General shall give the person written notification within 30 days after notice of the action is served on the Attorney General that the Attorney General is conducting an investigation of the facts of the action and will take over the action.

f. The Attorney General may, for good cause shown, request that the court extend the time during which the complaint remains under seal. Any such motion may be supported by affidavits or other submissions in camera.

g. Before the expiration of the 60-day period or any extensions obtained under subsection f., the Attorney General shall:

(1) file a pleading with the court that he intends to proceed with the action, in which case the action is conducted by the Attorney General and the seal shall be lifted; or

(2) file a pleading with the court that he declines to proceed with the action, in which case the seal shall be lifted and the person bringing the action shall have the right to conduct the action.

h. The defendant's answer to any complaint filed under this act shall be filed in accordance with the Rules Governing the Courts of the State of New Jersey after the complaint is unsealed and served upon the defendant.

i. When a person files an action under this act, no other person except the State may intervene or bring a related action based on the facts underlying the pending action.

C.2A:32C-6 Primary responsibility for prosecuting action; remedies, supplementary.

6. a. If the Attorney General proceeds with the action, the Attorney General shall have primary responsibility for prosecuting the action, and shall not be bound by any act of the person bringing the action. The person bringing the action has the right to continue as a party to the action, subject to limitations specified in this act. The person bringing the action has an ongoing duty to disclose information related to the action to the Attorney General.

b. The Attorney General may move to dismiss the action for good cause shown, notwithstanding the objections of the person bringing the action, provided that the person bringing the action has been notified by the Attorney General and the court has provided the person bringing the action with the opportunity for a hearing.

c. Nothing in this act shall be construed to limit the authority of the Attorney General or the person bringing the action to settle the action, if the court determines after a hearing that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, the hearing may be held in camera.

d. Upon a showing by the Attorney General that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the Attorney General's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, including, but not limited to:

- (1) Limiting the number of witnesses the person may call;
- (2) Limiting the length of the testimony of the person's witnesses;
- (3) Limiting the person's cross-examination of witnesses; or
- (4) Otherwise limiting the participation by the person in the litigation.

e. Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

f. If the Attorney General decides not to proceed with the action, the seal shall be lifted and the person who initiated the action shall have the right to conduct the action. The decision of the Attorney General on whether to proceed with an action

shall be deemed final and shall not be subject to review by any court or agency. If the Attorney General so requests, the Attorney General shall be served at the expense of the Attorney General with copies of all pleadings and motions filed in the action and copies of all deposition transcripts. When a person proceeds with the action, the court, without limiting the rights of the person initiating the action, may permit the Attorney General to intervene and take over the action on behalf of the State at a later date upon a showing of good cause.

g. Whether or not the Attorney General proceeds with the action, upon a showing by the Attorney General that certain actions of discovery by the person initiating the action would interfere with an investigation by the State or the prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera by the Attorney General that the criminal or civil investigation or proceeding has been pursued with reasonable diligence and any proposed discovery in the civil action will interfere with an ongoing criminal or civil investigation or proceeding.

h. The application of one civil remedy under this act shall not preclude the application of any other remedy, civil, administrative or criminal, under this act or any other provision of law. Civil and administrative remedies under this act are supplemental, not mutually exclusive. If after the filing of a complaint under section 5 of this act, the Attorney General decides to pursue an alternate administrative recovery action under subsection (e) of section 17 of P.L.1968, c.413 (C.30:4D-17), the plaintiff shall have the same rights in the administrative recovery action as the plaintiff would have had if the action had continued in Superior Court. Any finding of fact or conclusion of law made in the proceeding under subsection (e) of section 17 of P.L.1968, c.413 (C.30:4D-17) that has become final shall be conclusive on all parties to an action initiated under section 5 of this act. As used in this subsection, the term “final” means that the finding of fact or conclusion of law has been finally determined on appeal to the appropriate court, all time for filing such an appeal with respect to the finding or conclusion has expired, or the finding or conclusion is not subject to judicial review.

C.2A:32C-7 Distribution of proceeds.

7. a. If the Attorney General proceeds with and prevails in an action brought by a person under this act, except as provided in subsection b., the court shall order the distribution to the person of at least 15% but not more than 25% of the proceeds recovered under any judgment obtained by the Attorney General under this act or of

the proceeds of any settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action.

b. If the Attorney General proceeds with an action which the court finds to be based primarily on disclosures of specific information, other than that provided by the person bringing the action, relating to allegations or transactions in a criminal, civil, or administrative hearing; a legislative, administrative, or inspector general report, hearing, audit, or investigation; or from the news media, the court may award such sums as it considers appropriate, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation.

c. The Attorney General shall receive a fixed 10% of the proceeds in any action or settlement of the claim that it brings, which shall be deposited in the “False Claims Prosecution Fund” established in section 13 of this act and shall only be used to support its ongoing investigation and prosecution of false claims pursuant to the provisions of this act.

d. If the Attorney General does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25% and not more than 30% of the proceeds of the action or settlement of a claim under this act.

e. Following any distributions under subsection a., b., c. or d. of this section the State entity injured by the submission of a false claim shall be awarded an amount not to exceed its compensatory damages. Any remaining proceeds, including civil penalties awarded under this act, shall be deposited in the General Fund.

f. Any payment under this section to the person bringing the action shall be paid only out of the proceeds recovered from the defendant.

g. Whether or not the Attorney General proceeds with the action, if the court finds that the action was brought by a person who knowingly planned and initiated the violation of this act upon which the action was brought, the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise receive under this section, taking into account the role of the person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his role in the violation of this act the person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the Attorney General to continue the action.

C.2A:32C-8 Awarding of attorney’s fees, expenses and costs.

8. a. If the Attorney General initiates an action under this act or assumes control of an action brought by a person under this act, the Attorney General shall be awarded reasonable attorney's fees, expenses, and costs.

b. If the court awards proceeds to the person bringing the action under this act, the person shall also be awarded an amount for reasonable attorney's fees, expenses, and costs. Payment for reasonable attorney's fees, expenses, and costs shall be made from the recovered proceeds before the distribution of any award.

c. If the Attorney General does not proceed with an action under this act and the defendant is the prevailing party, the court may award the defendant reasonable attorney's fees, expenses, and costs against the person bringing the action if the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

d. No liability shall be incurred by the State or the Attorney General for any expenses, attorney's fees, or other costs incurred by any person in bringing or defending an action under this act.

C.2A:32C-9 Immunity from civil liability; limitations on bringing an action.

9. a. No member of the Legislature, a member of the Judiciary, a senior Executive branch official, or a member of a county or municipal governing body may be civilly liable if the basis for an action is premised on evidence or information known to the State when the action was brought. For purposes of this subsection, the term "senior Executive branch official" means any person employed in the Executive branch of government holding a position having substantial managerial, policy-influencing or policy-executing responsibilities.

b. A person may not bring an action under this act based upon allegations or transactions that are the subject of a pending action or administrative proceeding in the State.

c. No action brought under this act shall be based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in an investigation, report, hearing or audit conducted by or at the request of the Legislature or by the news media, unless the action is brought by the Attorney General, or unless the person bringing the action is an original source of the information. For purposes of this subsection, the term "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the State before filing an action under this act based on the information.

d. No action may be brought under this act by a present or former employee or agent of the State or any political subdivision thereof when the action is based upon information discovered in any civil, criminal or administrative investigation or audit

which investigation or audit was within the scope of the employee's or agent's duties or job description.

C.2A:32C-10 Disclosure of information by employee, employee protections.

10. a. No employer shall make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a State or law enforcement agency or from acting to further a false claims action, including investigating, initiating, testifying, or assisting in an action filed or to be filed under this act.

b. No employer shall discharge, demote, suspend, threaten, harass, deny promotion to, or in any other manner discriminate against an employee in the terms and conditions of employment because of lawful acts done by the employee on behalf of the employee or others in disclosing information to a State or law enforcement agency or in furthering a false claims action, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this act.

c. An employer who violates subsection b. of this section shall be liable for all relief necessary to make the employee whole, including reinstatement with the same seniority status such employee would have had but for the discrimination, two times the amount of back pay, interest on the back pay, compensation for any special damage sustained as a result of the discrimination, and, where appropriate, punitive damages. In addition, the defendant shall be required to pay litigation costs and reasonable attorney's fees associated with an action brought under this section. An employee may bring an action in the Superior Court for the relief provided in this subsection.

d. An employee who is discharged, demoted, suspended, harassed, denied promotion, or in any other manner discriminated against in the terms and conditions of employment by his employer because of participation in conduct which directly or indirectly resulted in a false claim being submitted to the State shall be entitled to the remedies under subsection c. of this section if, and only if, both of the following occurred:

(1) The employee voluntarily disclosed information to a State or law enforcement agency or acts in furtherance of a false claims action, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed.

(2) The employee had been harassed, threatened with termination or demotion, or otherwise coerced by the employer or its management into engaging in the fraudulent activity in the first place.

C.2A:32C-11 Statute of limitations for bringing civil action.

11. A civil action under this act may not be brought:

a. More than six years after the date on which the violation of the act is committed; or

b. More than three years after the date when facts material to the right of action are known or reasonably should have been known by the State official charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed, whichever occurs last.

C.2A:32C-12 Evidence required for action, preponderance.

12. In any action brought under this act, the State or the person bringing the action shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

C.2A:32C-13 “False Claims Prosecution Fund.”

13. a. There is established in the General Fund the “False Claims Prosecution Fund” as a nonlapsing revolving fund in the Department of the Treasury. Monies deposited in the fund shall be utilized by the Attorney General for the exclusive purpose of investigating and prosecuting false claims. The State Treasurer shall deposit 10% of the proceeds recovered by the Attorney General pursuant to subsection c. of section 7 of P.L.2007, c.265 (C.2A:32C-7) in the False Claims Prosecution Fund.

b. The State Treasurer shall deposit 25% of the State share of monies recovered from actions related to false or fraudulent Medicaid claims brought pursuant to this act in the “Medicaid Fraud Control Fund” established by section 10 of P.L.2007, c.58 (C.30:4D-62).

c. Except as provided in subsections a. and b. of this section, the State share of moneys recovered by the Attorney General in accordance with the provisions of this act shall be deposited in the General Fund.

C.2A:32C-14 Issuance of subpoenas, warrant for arrest; other power of Attorney General.

14. a. If the Attorney General has reason to believe that a person has engaged in, or is engaging in, an act or practice which violates this act, or any other relevant statute or regulation, the Attorney General or the Attorney General's designee may administer oaths and affirmations, and request or compel the attendance of witnesses or the production of documents. The Attorney General may issue, or designate another to issue, subpoenas to compel the attendance of witnesses and the production of books, records, accounts, papers and documents. Witnesses shall be entitled to receive the same fees and mileage as persons summoned to testify in the courts of the State.

If a person subpoenaed pursuant to this section shall neglect or refuse to obey the command of the subpoena, a judge of the Superior Court may, on proof by affidavit of service of the subpoena, of payment or tender of the fees required and of refusal or neglect by the person to obey the command of the subpoena, issue a warrant for the arrest of said person to bring that person before the judge, who is authorized to proceed against the person as for a contempt of court.

b. If the matter that the Attorney General seeks to obtain by request is located outside the State, the person so required may make it available to the Attorney General or the Attorney General's representative to examine the matter at the place where it is located. The Attorney General may designate representatives, including officials of the state in which the matter is located, to inspect the matter on behalf of the Attorney General, and the Attorney General may respond to similar requests from officials of other states.

c. If a licensed professional or an owner, administrator or employee of a licensed professional, including but not limited to an owner, administrator or employee of any hospital, an insurance company, an insurance producer, solicitor or adjuster, or any other person licensed or certified by a licensing authority of this State, or an agent, representative or employee of any of them is found to have violated any provision of this section, the Attorney General shall notify the appropriate licensing authority of the violation so that the licensing authority may take appropriate administrative action.

d. State investigators shall not be subject to subpoena in civil actions by any court of this State to testify concerning any matter of which they have knowledge pursuant to a pending false claims investigation by the State, or a pending claim for civil penalties initiated by the State.

C.2A:32C-15 Sovereign immunity preserved.

15. This act shall not be construed as waiving the sovereign immunity of the State and its officers and employees as otherwise provided by law.

16. Section 17 of P.L.1968, c.413 (C.30:4D-17) is amended to read as follows:

17. (a) Any person who willfully obtains benefits under this act to which he is not entitled or in a greater amount than that to which he is entitled and any provider who willfully receives medical assistance payments to which he is not entitled or in a greater amount than that to which he is entitled is guilty of a high misdemeanor and, upon conviction thereof, shall be liable to a penalty of not more than \$10,000.00 or to imprisonment for not more than 3 years or both.

(b) Any provider, or any person, firm, partnership, corporation or entity, who:

(1) Knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any cost study, claim form, or any document necessary to apply for or receive any benefit or payment under this act; or

(2) At any time knowingly and willfully makes or causes to be made any false statement, written or oral, of a material fact for use in determining rights to such benefit or payment under this act; or

(3) Conceals or fails to disclose the occurrence of an event which

(i) affects his initial or continued right to any such benefit or payment, or

(ii) affects the initial or continued right to any such benefit or payment of any provider or any person, firm, partnership, corporation or other entity in whose behalf he has applied for or is receiving such benefit or payment

with an intent to fraudulently secure benefits or payments not authorized under this act or in greater amount than that which is authorized under this act; or

(4) Knowingly and willfully converts benefits or payments or any part thereof received for the use and benefit of any provider or any person, firm, partnership, corporation or other entity to a use other than the use and benefit of such provider or such person, firm, partnership, corporation or entity; is guilty of a high misdemeanor and, upon conviction thereof, shall be liable to a penalty of not more than \$10,000.00 for the first and each subsequent offense or to imprisonment for not more than three years or both.

(c) Any provider, or any person, firm, partnership, corporation or entity who solicits, offers, or receives any kickback, rebate or bribe in connection with:

(1) The furnishing of items or services for which payment is or may be made in whole or in part under this act; or

(2) The furnishing of items or services whose cost is or may be reported in whole or in part in order to obtain benefits or payments under this act; or

(3) The receipt of any benefit or payment under this act, is guilty of a high misdemeanor and, upon conviction thereof, shall be liable to a penalty of not more than \$10,000.00 or to imprisonment for not more than 3 years or both.

This subsection shall not apply to (A) a discount or other reduction in price under this act if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made under this act; and (B) any amount paid by an employer to an employee who has a bona fide employment relationship with such employer for employment in the provision of covered items or services.

(d) Whoever knowingly and willfully makes or causes to be made or induces or seeks to induce the making of any false statement or representation of a material fact with respect to the conditions or operations of any institution or facility in order that such institution or facility may qualify either upon initial certification or recertification as a hospital, skilled nursing facility, intermediate care facility, or

health agency, thereby entitling them to receive payments under this act, shall be guilty of a high misdemeanor and shall be liable to a penalty of not more than \$3,000.00 or imprisonment for not more than 1 year or both.

(e) Any person, firm, corporation, partnership, or other legal entity who violates the provisions of any of the foregoing subsections of this section or any provisions of section 3 of P.L. , c. (C.) (pending before the Legislature as this bill), shall, in addition to any other penalties provided by law, be liable to civil penalties of (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 to said person, firm, corporation, partnership or other legal entity for the period from the date upon which payment was made to the date upon which repayment is made to the State, (2) payment of an amount not to exceed three-fold the amount of such excess benefits or payments, and (3) payment in the sum of **[\$2,000.00]** 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 it may be adjusted for inflation pursuant to the federal Civil Penalties Inflation Adjustment Act of 1990, Pub.L.101-410 for each excessive claim for assistance, benefits or payments.

(f) Any person, firm, corporation, partnership or other legal entity, other than an individual recipient of medical services reimbursable by the Division of Medical Assistance and Health Services, who, without intent to violate this act, obtains medical assistance or other benefits or payments under this act in excess of the amount to which he is entitled, shall be liable to a civil penalty of payment of interest on the amount of the excess benefits or payments at the maximum legal rate in effect on the date the benefit or payment was made to said person, firm, corporation, partnership, or other legal entity for the period from September 15, 1976 or the date upon which payment was made, whichever is later, to the date upon which repayment is made to the State, provided, however, that no such person, firm, corporation, partnership or other legal entity shall be liable to such civil penalty when excess medical assistance or other benefits or payments under this act are obtained by such person, firm, corporation, partnership or other legal entity as a result of error made by the Division of Medical Assistance and Health Services, as determined by said division; provided, further, that if preliminary notification of an overpayment is not given to a provider by the division within 180 days after completion of the field audit as defined by regulation, no interest shall accrue during the period beginning 180 days after completion of the field audit and ending on the date preliminary notification is given to the provider.

(g) All interest and civil penalties provided for in this act and all medical assistance and other benefits to which a person, firm, corporation, partnership, or other legal entity was not entitled shall be recovered in an administrative procedure

held pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C. 52:14B-1, et seq.), except that recovery actions against minors or incompetents shall be initiated in a court of competent jurisdiction.

(h) Upon the failure of any person, firm, corporation, partnership or other legal entity to comply within 10 days after service of any order of the director or his designee directing payment of any amount found to be due pursuant to subsection (g) of this section, or at any time prior to any final agency adjudication not involving a recipient or former recipient of benefits under this act, the director may issue a certificate to the clerk of the superior court that such person, firm, corporation, partnership or other legal entity is indebted to the State for the payment of such amount. A copy of such certificate shall be served upon the person, firm, corporation, partnership or other legal entity against whom the order was entered. Thereupon the clerk shall immediately enter upon his record of docketed judgments the name of the person, firm, corporation, partnership or other legal entity so indebted, and of the State, a designation of the statute under which such amount is found to be due, the amount due, and the date of the certification. Such entry shall have the same force and effect as the entry of a docketed judgment in the Superior Court. Such entry, however, shall be without prejudice to the right of appeal to the Appellate Division of the Superior Court from the final order of the director or his designee.

(i) In order to satisfy any recovery claim asserted against a provider under this section, whether or not that claim has been the subject of final agency adjudication, the division or its fiscal agents is authorized to withhold funds otherwise payable under this act to the provider.

(j) The Attorney General may, when requested by the commissioner or his agent, apply ex parte to the Superior Court to compel any party to comply forthwith with a subpoena issued under this act. Any party who, having been served with a subpoena issued pursuant to the provisions of this act, fails either to attend any hearing, or to appear or be examined, to answer any question or to produce any books, records, accounts, papers or documents, shall be liable to a penalty of \$500.00 for each such failure, to be recovered in the name of the State in a summary civil proceeding to be initiated in the Superior Court. The Attorney General shall prosecute the actions for the recovery of the penalty prescribed in this section when requested to do so by the commissioner or his agent and when, in the judgment of the Attorney General, the facts and law warrant such prosecution. Such failure on the part of the party shall be punishable as contempt of court by the court in the same manner as like failure is punishable in an action pending in the court when the matter is brought before the court by motion filed by the Attorney General and supported by affidavit stating the circumstances.

(cf: P.L.1979, c.365, s.16)

C.2A:32C-16 Existing law, certain, unaffected.

17. This act shall not abrogate or modify any existing statutory or common law privileges or immunities.

C.2A:32C-17 Liberal construction, severability.

18. This act shall be liberally construed to effectuate its remedial and deterrent purposes. If any provision of this act or its application to any particular person or circumstance is held invalid, that provision or its application is severable and does not affect the validity of other provisions or applications of this act.

19. This act shall take effect on the 60th day after enactment.

Approved January 13, 2008.