NEW JERSEY: Summary of Selected Fraud & Abuse Statutes & Regulations

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** Note: The authors and editors have made every effort to provide direct links to each statute and administrative code. If, however, the link provided within this survey directs you to a blank Lexis page or the Lexis login page, please visit New Jersey’s General and Permanent Statutes website to locate a specific statute. To locate an administrative code, please go to the Table of Contents for New Jersey’s Administrative Codes, which is provided by Lexis Nexis for free public access.

1) ANTI-KICKBACK

Board of Medical Examiners Kickback Prohibition, N.J. Admin. Code § 13:35-6.17
With limited exceptions, individuals licensed by the Board of Medical Examiners (including, without limitation, physicians) may not directly or indirectly, give to or receive from any licensed or unlicensed source a gift of more than nominal (negligible) value, or any fee, commission, rebate, or bonus or other compensation however denominated, which a reasonable person would recognize as having been given or received in appreciation for or to promote conduct by a licensee including: purchasing a medical product, ordering or promoting the sale or lease of a device or appliance or other prescribed item, prescribing any type of item or product for patient use, or making or receiving a referral to or from another for professional services.

This regulation provides several specific exceptions for certain arrangements that satisfy the criteria imposed by the Board of Medical Examiners (e.g., rental of space at
N.J. Admin. Code § 13:35-6.17(h)).

This statute generally prohibits 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 Medicaid; 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 Medicaid shall be liable for a penalty of not less than $15,000.00 or more than $25,000.00 for each violation. This statute also provides for criminal penalties for certain violations.

**Board of Medical Examiners Diagnostic Testing Regulations, N.J. Admin. Code 13:35-2.6(r)**
In addition to general kickback prohibitions, the Board of Medical Examiners’ rules on diagnostic testing provide, consistent with N.J. Admin. Code 13:35-6.17(c), a consulting practitioner shall not request or receive, offer, or pay, directly or indirectly, any form of remuneration from the practitioner/professional office for accepting a referral of a patient. In addition, the Board of Medical Examiners imposes the following restrictions: (1) a referring practitioner shall not request or receive, offer, or pay, directly or indirectly, any form of remuneration from the consulting practitioner for providing a referral; (2) a practitioner shall not request or receive any form of remuneration from the company providing testing equipment or technicians to that practitioner or to his or her office, whether in the form of a shared fee, or for "rent" (whether on premises or off premises) or for "administrative services" or under any other description; (3) a referring or consulting practitioner shall not be deemed an independent contractor to anyone associated with the testing of a specific patient; thus, the bill, if any, for any component of the testing shall be submitted solely in the name of the referring or consulting practitioner, as applicable.

**Board of Chiropractic Examiners Kickback Prohibition, N.J. Admin. Code § 13:44E-3.9**
This regulation requires that a chiropractic physician requesting that another chiropractic physician or other practitioner perform any diagnostic tests shall: (1) comply with the limitations on lawful referral set forth in N.J. Stat. Ann. §§ 45:9-22.4 et seq. (Codey Law); and (2) not refer a patient to another practitioner practicing at the same premises or at any space within or outside of the office or building, parking lot, or other area in any mobile premises in the environs of the office or building, unless: (a) the patient record fully justifies the recommendation for evaluation; (b) that other practitioner is a bona fide partner, fellow shareholder of a professional service corporation or other permitted practice structure, or a regularly salaried practitioner-employee of the chiropractic physician requesting the performance of a diagnostic test; and (c) the bill for professional services reflects the name of the practice entity and identity of the provider of service.

This regulation prohibits a psychologist from paying, offering to pay, or receiving any fee or other form of compensation for referral of a client for professional services or for the purchase of goods. This prohibition does not prohibit a psychologist from: (1) paying a flat fee for regular advertising services; (2) paying a flat fee for the licensee’s placement on a commercially sponsored “referral list” of licensed health care providers; or (3) contributing a fee to a professionally sponsored referral service.


This statute prohibits physical therapists and physical therapist assistants from engaging directly or indirectly in the division, transferring, assigning, rebating, or refunding of fees received for professional services, or pay or accept fees or commissions for referrals for professional services; however, nothing in this statute is to be construed to prohibit physical therapists who are members of a professional association or other business entity, properly organized pursuant to law, from making a division of fees among themselves as determined by contract to be necessary to defray joint operating costs or pay salaries, benefits, or other compensation to employees.


This regulation prohibits physical therapists from accepting, or agreeing to accept, from any person, firm, or corporation any fee, commission, rebate, gift, or other form of remuneration for prescribing, ordering, or promoting the sale of a device, appliance, or other item or service; except that nothing in this section shall preclude a licensed physical therapist from accepting a product or commodity that can be used as a sample by patients, provided that the licensed physical therapist does not charge the patient for such items.

**State Board of Ophthalmic Dispensers and Ophthalmic Technicians Kickback Prohibition, N.J. Admin. Code § 13:33-5.8(b)**

This regulation provides that it shall be unlawful for any ophthalmic dispenser or ophthalmic technician or employee or agent thereof or any other person on their behalf to offer to pay a rebate or commission in any form whatsoever to, or receive a rebate or commission from, any physician, optometrist, or any other person in return for referring patients to anyone licensed under N.J. Stat. Ann. §§ 52:17B-41.1 *et seq.*

**State Board of Ophthalmic Dispensers and Ophthalmic Technicians Space Rental Requirements, N.J. Admin. Code § 13:33-3.1**

A board licensee may rent space to or from a person authorized by law to prescribe corrective or therapeutic eyewear or from a separately held entity in which said person and/or his or her immediate family hold any financial interest, only where the total rent to be paid is set forth in a written agreement and such rent is for a fixed dollar amount for a stated period of time determined by the fair market value for the rented space. The rent shall not be determined by the number of referrals made or by volume of sales or fees.

With limited exceptions, this regulation provides that dentists shall not receive, solicit, offer, or pay any remuneration as an inducement to make a referral or as compensation for a referral of a patient for a service, product, drug, or device or to purchase, prescribe, or recommend a product, drug, or device. Nothing contained in this section shall prohibit a dentist from paying the reasonable costs of any advertisement permitted pursuant to N.J. Admin. Code §§ 13:30-6.1 and 6.2. This regulation also provides a limited exception for any gifts or credits to patients that do not exceed $25.00.

2) **PROHIBITIONS ON FEE SPLITTING**


Subject to qualifications and limitations, this regulation provides that a psychologist shall not permit the division of fees for professional services other than among licensed health care professionals in the same or in a closely allied professional health care field engaged in a bona fide partnership, professional service corporation, limited liability company, limited liability partnership, employment relationship, or between a psychologist and an applicant for licensure who is working under the supervision of the psychologist pursuant to a board issued temporary permit. A psychologist shall not divide fees for professional services rendered to a client with a psychologist practicing as an independent contractor. This regulation does not prohibit a psychologist from charging a flat fee to an independent contractor on a per-hour or per-service basis to coverage expenses.


Subject to qualifications and limitations, dentists shall not participate in any arrangement or agreement, with any person other than an associate, whereby any remuneration received by that person in payment for the provision of space, facilities, equipment, personnel, marketing, or management services used by the dentist is to be determined or calculated as a fixed percentage of, or otherwise dependent upon, the income or receipts derived from the practice of dentistry. This regulation does not preclude a dentist from entering into a bona fide profit-sharing plan or retaining the services of a collection agency.

3) **PROHIBITIONS ON SELF-REFERRAL**


With limited exceptions, it is unlawful for a practitioner (defined below) to refer a patient or direct an employee of the practitioner to refer a patient to a health care service in which the practitioner (or the practitioner's immediate family, or the practitioner in combination with the practitioner's immediate family, has a significant beneficial interest; (except that, in the case of a practitioner, a practitioner's immediate family, or a practitioner in combination with the practitioner's immediate family) who had the
significant beneficial interest prior to July 31, 1991, and in the case of a significant beneficial interest in a health care service that provides lithotripsy or radiation therapy pursuant to an oncological protocol that was held prior to March 1, 2010, the practitioner may continue to refer a patient or direct an employee to do so if that practitioner discloses the significant beneficial interest to the patient).

If a practitioner is permitted to refer a patient to a health care service pursuant to this section, the practitioner shall provide the patient with a written disclosure form, prepared pursuant to (N.J. Stat. Ann. § 45:9-22.6), and post a copy of this disclosure form in a conspicuous public place in the practitioner’s office.

The “Codey Law” defines “health care service” as a business entity that provides on an inpatient or outpatient basis: testing for or diagnosis or treatment of human disease or dysfunction; or dispensing of drugs or medical devices for the treatment of human disease or dysfunction. Health care service includes, but is not limited to, a bioanalytical laboratory, pharmacy, home health care agency, rehabilitation facility, nursing home, hospital, or a facility that provides radiological or other diagnostic imagery services, physical therapy, ambulatory surgery, or ophthalmic services.

The “Codey Law” defines the term "practitioner" as a licensed physician, chiropractor, or podiatrist.

The “Codey Law” provides limited exceptions to the self-referral prohibitions.


With limited exceptions, the Board of Medical Examiners regulations prohibit practitioners from referring a patient or directing an employee of the practitioner to refer a patient to a health care service in which the practitioner or the practitioner's immediate family, or the practitioner in combination with the practitioner's immediate family, has a significant beneficial interest, unless the practitioner held the interest prior to July 31, 1991 and discloses that interest to the patient as required by this rule or as otherwise permitted in this rule. Such a practitioner shall be deemed to be grandfathered. If a licensee professionally affiliated with a grandfathered practitioner obtains a significant beneficial interest in the same health care service in which the grandfathered practitioner holds an interest, on or after July 31, 1991, that practitioner shall not refer patients to that service. A licensee professionally affiliated with a grandfathered practitioner who does not hold an interest in that health care service may refer patients to that service so long as all of the disclosure requirements set forth in this rule are met.

The regulation defines “financial interest” as a monetary interest of any amount held by a practitioner personally or through immediate family, as defined herein, in a health care service to which the practitioner’s patients are referred. It includes the offer or receipt, directly or indirectly, by the practitioner or immediate family of anything of more than negligible value as a result of a patient's purchase of a prescribed service, goods, or device from the person or entity providing this. "Financial interest" includes a licensee's
financial interest in a contractual arrangement with a licensed health care facility (such as a hospital, nursing home, or clinic, etc.), whereby the licensee agrees to provide health care services on referral, for example, cardiac or radiologic diagnostic testing, to patients including those receiving emergency room care or inpatients or outpatients of the health care facility.

The regulations defines “grandfathered” as a personal attribute and status of an individual licensee derived from a significant beneficial interest in a health care service, held on or before July 30, 1991, which renders him or her exempt from the referral prohibitions set forth in N.J. Stat. Ann. § 45:9-22.5. Those practitioners employed by or professionally affiliated with a grandfathered practitioner do not share the "grandfathered" status.

The regulation defines "health care service" as a business entity that provides on an inpatient or outpatient basis: testing for or diagnosis or treatment of human disease or dysfunction or dispensing of drugs or medical devices for the treatment of human disease or dysfunction. Health care service includes, but is not limited to, a bioanalytical laboratory, pharmacy, home health care agency, home infusion therapy company, rehabilitation facility, nursing home, hospital, or a facility that provides radiologic or other diagnostic imaging services, physical therapy, ambulatory surgery, or ophthalmic services.

The regulation defines “immediate family” as the practitioner's spouse and children, the practitioner’s siblings and parents, the practitioner’s spouse’s siblings and parents, and the spouses of the practitioner’s children.

The regulation defines "practitioner" as physician, podiatrist, bioanalytical laboratory director or specialty laboratory director, acupuncturist, midwife, certified nurse midwife, physician assistant and all other categories of licensee now or henceforth under the jurisdiction of the State Board of Medical Examiners.

The regulation defines "significant beneficial interest" as any financial interest including an equity or ownership interest in a practice or in a commercial entity holding itself out as offering health care service. This interest does not, however, include ownership of a building or component thereof wherein the space is leased, in writing, to a person or entity at the prevailing rate under a straight lease agreement (that is, a fixed fee for a fixed term), or any interest held in publicly traded securities.

Note: Please consider carefully with the “Codey Law” set forth above.

Board of Medical Examiners Additional Prohibitions Concerning Laboratory, Physical Therapy, Radiology, and Ophthalmology Services, N.J. Admin. Code § 13:35-6.16(i), (j), (k), and (l)

In addition to general self-referral prohibitions mentioned briefly above, the Board of Medical Examiners imposes additional restrictions in connection with laboratory, physical therapy, radiology, and ophthalmology services.
4) FALSE CLAIMS/FRAUD & ABUSE

A person or practitioner violates this Act if he or she presents or causes 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. The Act prohibits additional conduct pertaining to insurance claims and insurance applications.

In addition to the civil penalties of up to $5,000.00 for the first violation, up to $10,000.00 for the second violation and up to $15,000.00 for each subsequent violation, this Act provides that insurers damaged as a result of a violation of this Act may sue to recover compensatory damages that shall include reasonable investigation expenses, costs of the litigation, and attorney fees. Further, this Act also permits an insurer to seek treble damages if a court determines that the defendant in an action brought by the insurer engaged in a pattern of violating this Act.

**Special Note:** On May 4, 2017 the New Jersey Supreme Court held in *Allstate Insurance Company v. Northfield Medical Center, P.C.*, 228 N.J. 596 (2017) that a chiropractor and an attorney knew the regulatory requirements for the proper structure of a medical practice but promoted a practice scheme designed to circumvent such requirements while appearing compliant. The result was the knowing provision of services with the foreseeable result of the submission of invalid and misleading claims under the New Jersey Insurance Fraud Prevention Act.

This Act provides for criminal penalties for any person who makes, or causes to be made, a false, fictitious, fraudulent, or misleading statement of material fact in, or omitting a material fact from, or causing a material fact to be omitted from, any record, bill, claim, or other document, in writing, electronically or in any other form, that a person attempts to submit, submits, or causes to be submitted, or attempts to cause to be submitted for payment or reimbursement for health care services. The Act provides heightened penalties for any “practitioner” who violates the Act. The Act defines a “practitioner” as any person who is licensed, registered, or certified to practice a profession or occupation.

**Insurance Fraud (Criminal Statute), N.J. Stat. Ann. § 2C:21-4.6**
This law provides criminal penalties for the crime of insurance fraud if a person knowingly makes, or causes to be made, a false, fictitious, fraudulent, or misleading statement of material fact in, or omits a material fact from, or causes a material fact to be omitted from, any record, bill, claim, or other document, in writing, electronically, orally, or in any other form, that a person attempts to submit, submits, causes to be submitted, or attempts to cause to be submitted as part of, in support of, or opposition to or in connection with: (1) a claim for payment, reimbursement, or other benefit pursuant
to an insurance policy; (2) an application to obtain or renew an insurance policy; (3) any payment made or to be made in accordance with the terms of an insurance policy or premium finance transaction; or (4) an affidavit, certification, record, or other document used in any insurance or premium finance transaction.

This Act provides 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.A. § 3729 et seq.) for each false or fraudulent claim, plus three times the amount of damages that the State of New Jersey sustained because of the act of that person, if the person commits any of the following acts: (1) knowingly presents or causes to be presented to an employee, officer, or agent of the State of New Jersey, or to any contractor, grantee, or other recipient of state funds, a false or fraudulent claim for payment or approval; (2) 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 of New Jersey; (3) conspires to defraud the state by getting a false or fraudulent claim allowed or paid by the State of New Jersey; and (4) has possession, custody, or control of public property or money used or to be used by the State of New Jersey and knowingly delivers or causes to be delivered less property than the amount for which the person receives a certificate or receipt. N.J. Stat. Ann. 2A:32C-3(a)-(d). The law also provides penalties for other conduct as set forth in the New Jersey False Claims Act.

In addition to other prohibitions, this law criminalizes the use of “runners” if the person knowingly acts as a runner or uses, solicits, directs, hires, or employs a runner. A runner is generally defined as a person who, for pecuniary benefit, procures or attempts to procure a client, patient, or customer at the direction of, request of, or in cooperation with a provider whose benefit is to seek to obtain benefits under a contract of insurance or assert a claim against an insured or an insurance carrier for providing services to the client, patient, or customer.

The Insurance Fraud Detection Award Program provides an award of up to $25,000.00 to persons providing information leading to the arrest, prosecution, and conviction of persons or entities who have committed health care claims fraud, insurance fraud, or any other criminal offense related to an insurance transaction as detailed in the reward program application.

**5) GENERAL WHISTLEBLOWER PROTECTIONS**

**Conscientious Employee Protection Act, N.J. Stat. Ann. §§ 34:19-1 et seq.**
The Conscientious Employee Protection Act prohibits an employer from taking any retaliatory action against an employee because the employee does any of the following:
(1) 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: (a) is in violation of a law, or a rule or regulation promulgated pursuant to law, including any violation 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, or, in the case of an employee who is a licensed or certified health care professional, reasonably believes constitutes improper quality of patient care; or (b) is fraudulent or criminal, including any activity, policy, or practice of deception or misrepresentation that the employee reasonably believes may defraud any shareholder, investor, client, patient, customer, employee, former employee, retiree, or pensioner of the employer or any governmental entity;

(2) 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 promulgated pursuant to law by the employer, or another employer, with whom there is a business relationship, including any violation 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, or, in the case of an employee who is a licensed or certified health care professional, provides information to, or testifies before, any public body conducting an investigation, hearing, or inquiry into the quality of patient care; or

(3) Objects to, or refuses to participate in any activity, policy, or practice that the employee reasonably believes: (a) is in violation of a law, or a rule or regulation promulgated pursuant to law, including any violation 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, or, if the employee is a licensed or certified health care professional, constitutes improper quality of patient care; (b) is fraudulent or criminal, including any activity, policy, or practice of deception or misrepresentation that the employee reasonably believes may defraud any shareholder, investor, client, patient, customer, employee, former employee, retiree, or pensioner of the employer or any governmental entity; or (3) is incompatible with a clear mandate of public policy concerning the public health, safety, or welfare or protection of the environment.

6) HELPFUL LINKS
- [State of New Jersey Home Page](#)
- [New Jersey Office of Insurance Fraud Prosecutor](#)
- [New Jersey Department of Law and Public Safety (Attorney General's Office)](#)
- [New Jersey Division of Consumer Affairs](#)
- [State Board of Medical Examiners](#)
- [State Board of Chiropractic Examiners](#)
- [State Board of Dentistry](#)
- [State Board of Psychological Examiners](#)
- State Board of Physical Therapy
- State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians
- State Board of Optometrists
- New Jersey Department of Health
- New Jersey Department of Banking and Insurance
- New Jersey Department of Human Services
- New Jersey Administrative Codes
- New Jersey Legislature
- New Jersey Statutes