



***The Arc***<sup>TM</sup>

*of Hunterdon County*

# Compliance Action Plan

**Adopted July 1, 2019**

\*Amended January 24, 2022

\*\* Reviewed March 2024

## Table of Contents

|  |    |
|--|----|
| Purpose and Overview   | 2  |
| Compliance Plan Prelude  | 3  |
| Federal False Claims Liability                                     | 4  |
| State Statutes section 6032  | 7  |
| Health Insurance Portability and Accountability Act of 196 (HIPAA) | 13 |
| General Standards of Conduct                                       | 18 |
| HIPAA Standards of Conduct   | 22 |
| Mobile Phone Policy  | 24 |
| Compliance Officers and Committee                                  |    |
| Board of Directors Responsibilities                                | 26 |
| Administrator Responsibilities                                     | 27 |
| Compliance Officer Responsibilities                                | 28 |
| Compliance Committee Responsibilities                              | 32 |
| Education and Training   | 34 |
| Billing Responsibilities   | 36 |
| Auditing and Monitoring  | 37 |
| Enforcing Standards  |    |
| Investigation and Response   | 39 |

## Compliance Action Plan: Purpose and Overview

The Arc of Hunterdon County, its Board of Directors, and its administration are committed to quality and efficient consumer care, high standards of ethical, professional and business conduct; and full compliance with all applicable federal and state laws affecting the delivery or payment of health care, including those that prohibit fraud and abuse waste of health care resources.

The purpose of this Compliance Action Plan and its component policies and procedures is to establish and maintain a culture within The Arc of Hunterdon County that promotes quality and efficient consumer care; high standards of ethical and business conduct; and the prevention, detection and resolution of conduct that does not conform to The Arc of Hunterdon County's standards and policies, applicable law, and long-term care or payor requirements. The Compliance Action Plan applies to all The Arc of Hunterdon personnel, including but not limited to its Board of Directors, administration, employees, volunteers, and other entities providing services on behalf of the Arc of Hunterdon County (collectively "The Arc of Hunterdon County personnel").

The Compliance Action Plan includes the following elements:

1. Written standards, policies and procedures which promote the Arc of Hunterdon County's commitment to compliance with applicable laws and regulations.
2. The designation of a Compliance Officer and Compliance Committee charged with the responsibility of implementing and monitoring the Compliance Action Plan
3. Regular, effective education and training programs for all affected The Arc of Hunterdon County personnel as appropriate to their functions.
4. A process to receive complaints concerning possible Compliance Action Plan violations, procedures to protect the anonymity of complainants to the extent possible, and policies that protect complainants from retaliation.
5. A process to respond to allegations of improper activities and the enforcement of appropriate disciplinary action against The Arc of Hunterdon County personnel who have violated The Arc of Hunterdon County policies, laws, regulations, or health care program requirements.
6. Periodic audits or other methods to monitor compliance and assist in the reduction of problems in any identified areas.
7. A process for investigating and resolving any identified problems.
8. Document Retention.

As demonstrated by the signatures below, the Compliance Action Plan is enacted at the direction and with the support of the Board of Directors and administration.

---

Chairman, Board of Directors

---

Date

---

Administrator

---

Date

---

Compliance Officer

---

Date

## Compliance Action Plan: Prelude

The Arc of Hunterdon County's Compliance Action Plan has been written with the federal and state statutes related to Section 6032 in mind. We have incorporated these statutes into our compliance policies and procedures. Each statute in detail can be found on P:\Compliance Plan\Federal and State Statutes Section 6032. The statutes that are referenced in our compliance plan are listed below.

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. 30:4D-17(a) - (d)
4. 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
5. Health Care Claims Fraud Act, N.J.S. 2C:21-4.2 and 4.3; N.J.S. 2C:51-5
6. Conscientious Employee Protection Act, N.J.S. 34:19-1 et seq.
7. New Jersey False Claims Act, P.L. 2007, Chapter 265, as amended by P.L. 2009, Chapter 265.
8. New Jersey Insurance Fraud Prevention Act, N.J.S.A 17:33A-1 et seq

# Federal False Claims Liability, Anti-Retaliation Protections, and Detecting and Responding to Fraud

## Purpose:

To satisfy the requirements of Section 6032 of the Deficit Reduction Act of 2005 by setting forth certain federal state law relating to liability for false claims and statements; protections against reprisal or retaliation for those who report wrongdoing; and The Arc of Hunterdon County (“Arc”) policies and procedures to detect and prevent fraud, waste, and abuse.

## Definitions:

Knowingly making, using or causing to be made or used, a false record or statement material to a false or fraudulent claim; conspiring to commit any violation of the False Claims Act, falsely certifying receipt of property on a document without completely knowing that the information is true deliberate ignorance and “reckless disregard” for the truth.

## Policy:

It is the policy of the Arc of Hunterdon County to obey all federal and state laws, to implement and enforce procedures to detect and prevent fraud, waste and abuse regarding payments to the Arc of Hunterdon County from federal or state healthcare programs, and to provide protections for those who report actual or suspected wrongdoing.

## Procedure:

1. This policy applies to all employees, contractors, and agents of the Arc of Hunterdon County.
2. It is the personal responsibility of all who are associated with the Arc of Hunterdon County to honor the Healthcare System’s commitment to conformance to high ethical standards and compliance with all governing laws and regulations in the delivery of healthcare and in all its business dealings.
3. Any member of the Arc of Hunterdon County workforce who knows or reasonably believes that another member may be involved in any activity prohibited by the Federal False Claims Act, similar state laws or other fraud and abuse laws should report such belief using established reporting procedures which include reporting the matter to their supervisor, any member of senior management, the Corporate Compliance Officer, Security Officer or by using the corporate compliance hotline.
4. The Arc of Hunterdon County will not tolerate any intimidation or retaliatory act against any individual, who is in good faith, makes a report or practices reasonably believed, to be in violation of this policy.

## Explanation of Laws:

Set forth below are the summaries of certain statutes that provide liability for false claims and statements. These summaries are not intended to identify all applicable laws but rather to outline some of the major statutory provisions as required by the Deficit Reduction Act of 2005.

### Federal False Claims Laws

The Federal False Claims Act (FCA) imposes civil liability on any person or entity who:

- Knowingly files a false or fraudulent claim for payments to Medicare, Medicaid or other federally funded health care program.
- Knowingly uses a false record or statement to obtain payment on a false or fraudulent claim from Medicare, Medicaid or other federally funded health care programs; or
- Conspires to defraud Medicare, Medicaid or other federally funded health care program by attempting to have a false or fraudulent claim paid.

“Knowingly” means:

- actual knowledge that the information on the claim is false.
- acting in deliberate ignorance of whether the claim is true or false; or
- acting in reckless disregard of whether the claim is true or false.

A person or entity found liable under the Federal False Claims Act is subject to a civil money penalty of between \$5,000 and \$10,000, plus three times the amount of damages that the government sustained because of the illegal act. In health care cases, the amount of damages sustained is the amount paid for each false claim that is filed.

Anyone may bring a qui tam action under the Federal False Claims Act in the name of the United States in federal court. The case is initiated by filing the complaint and all available material evidence under seal with the federal court. The government investigates the complaint. The government may, and often does, obtain additional investigation time by showing good cause. After expiration of the review and investigation period, the government may elect to pursue the case in its own name or decide not to pursue the case. If the government decides to not pursue the case, the person who filed the action has the right to continue with the case on his or her own.

If the government proceeds with the case, the person who filed the action will receive between 15 percent and 25 percent of any recovery depending upon the contribution of the person to the prosecution of the case. If government does not proceed with the case, the person who filed the action will be entitled to between 25 percent and 30 percent of any recovery, plus reasonable expenses and attorneys’ fees and costs.

**Anti-Discrimination:**

Anyone initiating a qui tam case may not be discriminated or retaliated against in any manner by their employer. The employee is authorized under the FCA to initiate court proceedings to make themselves whole for any job-related losses resulted from any such discrimination or retaliation.

**Federal Program Fraud Civil Remedies Act:**

The Federal Program Fraud Civil Remedies Act (PFCRA) creates administrative remedies for making false claims and false statements. These penalties are separate from, and in addition to, any liability that may be imposed under the Federal False Claims Act.

The PFCRA imposes liability on people or entities who file a claim that they know or have reason to know

- is false, fictitious or fraudulent.
- includes or is supported by any written statement that contains false, fictitious or fraudulent information.
- includes or is supported by any written statement that omits a material fact, which causes the statement to be false, fictitious or fraudulent, and the person or entity submitting the statement has a duty to include the omitted fact
- is for payment for property or services not provided as claimed

A violation of this section of the PFCRA is punishable by a \$5,000 civil penalty for each wrongfully filed claim, plus an assessment of twice the amount of any unlawful claim that has been paid.

In addition, a person or entity that violates the PFCRA if they submit a written statement which they know or should know:

- assets a material fact that is false, fictitious or fraudulent; or
- omits a material fact that they had a duty to include, the omission caused the statement to be false, fictitious or fraudulent, and the statement contained a certification of accuracy.

A violation of this section of the PFCRA carries a civil penalty of up to \$5,000 in addition to any other remedy allowed under other laws.

**Anti-Retaliation “Whistleblower” Protections:**

Individuals within an organization who observe activities or behavior that may violate the law in some manner and who report their observations either to management or to governmental agencies are provided protections under certain laws.

For example, protections are afforded to people who file qui tam lawsuits under Federal False Claims Act, which is discussed above. The Federal Civil False Claims Act, states that any employee who is discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against in terms and conditions of employment because of lawful actions taken in furtherance of a qui tam action is entitled to recover damages. He or she is entitled to “all relief necessary to make the employee whole,” including reinstatement with the same seniority status, twice the amount of back pay (plus interest), and compensation for any other damages the employee suffered as a result of the discrimination. The employee also can be awarded litigation costs and reasonable attorney fees.

**Role of Federal False Claims Laws:**

The laws described in this policy create a comprehensive scheme for controlling waste, fraud, and abuse in federal and state health care programs by giving appropriate governmental agencies the authority to seek out, investigate, and prosecute violations. Enforcement activities are pursued in three available forms- criminal, civil, and administrative. This provides a broad spectrum of remedies to battle this problem.

Anti-retaliation protections for individuals who make good faith reports of waste, fraud, and abuse encourage reporting and provide broader opportunities to prosecute violators. Statutory provisions, such as the anti-retaliation provisions of the Federal Civil False Claims Act, create reasonable incentives for this purpose. Employment protections create a level of security employees need to assist with the prosecution of these cases.

## State Statutes Related to Section 6032 of the Deficit Reduction Act of 2005

**New Jersey Medical Assistance and Health Services Act Criminal Penalties, N.J.S. 30:4-17(a)-(d)** Provides criminal penalties for individuals and entities engaging in fraud or other criminal violations relating to Title XIX funded programs. They include: (a) fraudulent receipt of payments or benefits: fine of up to \$10,000, imprisonment for up to 3 years, or both; (b) false claims, statements or omissions, or conversion of benefits or payments: fine of up to \$10,000, imprisonment for up to 3 years, or both; (c) kickbacks, rebates, and bribes: fine of up to \$10,000, imprisonment for up to 3 years, or both, and (d) false statements or representations about conditions or operations of an institution or facility to qualify for payments: fine of up to \$3,000, or imprisonment of up to 1 year, or both. Criminal prosecutions are generally handled by the Medicaid Fraud Section within the Office of Insurance Fraud Prosecutor, in the N.J. Division of Criminal Justice.

### **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-17.1a**

In addition to the criminal sanctions discussed above, violations of N.J.S. 30:4(a)-(d) can also result in the following civil sanctions: (a) unintentional violations: recover of overpayments and interest; (b) intentional violation: recovery of overpayments, interest, up to triple damages, and up to \$2,000 for each false claim. Recovery actions are generally pursued administratively by the Division of Medical Assistance and Health Services, with the assistance of the Division of Law in the NJ Attorney General's Office and can be obtained against any individual or entity responsible for receiving the benefit or possession of the incorrect amounts.

In addition to recovery actions, violations can result in the exclusion of an individual or entity from participation in all health care programs funded in whole or in part by the N.J. Division of Medical Assistance Services. Recovery and exclusion can also be obtained as part of a criminal prosecution by the Medicaid Fraud Section of the N.J. Division of Criminal Justice.

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

Provides the following criminal penalties from health care claims fraud, including the submission on false claims to programs funded in whole or in part with state funds:

A practitioner who knowingly commits health care claims fraud in the course of providing professional services is guilty of a crime of the second degree, and is subject to a fine of up to 5 times the monetary benefits obtained or sought to be obtained and to permanent forfeiture of his license;

- a. A practitioner who recklessly commits health care claims fraud in the course of providing professional services is guilty of a crime of the third degree, and is subject to a fine of up to 5 times the pecuniary benefit obtained or sought to be obtained and the suspension of his license for up to 1 year;
- b. A person who is not a practitioner subject to paragraph a. or b. above (for example, someone who is not licensed, registered or certified by an appropriate State agency as a health care professional) is guilty of a crime of the third degree if that person knowingly commits health care claims fraud. Such a person is guilty of a crime of the second degree if that person knowingly commits 5 or more acts of health care claims fraud, and the aggregate monetary benefit obtained is at least \$1,000. In addition to all other criminal penalties allowed by law, such a person may be subject to a fine of up to 5 times the monetary benefit obtained or sought to be obtained.
- c. A person who is not a practitioner subject to paragraph a. or b. above is guilty of a crime of the fourth degree if that person recklessly commits health care claims fraud. In addition to all other



criminal penalties allowed by law, such a person may be subject to a fine of up to 5 times the monetary benefit obtained or sought to be obtained.

| U.S.C. Citation       | Name/Description  | CFR Citation        | DOJ penalty assessed after 8/1/16 (\$) | DOJ penalty assessed after 2/3/17 (\$) | DOJ penalty assessed after 1/29/20 (\$) |
|-----------------------|---|---------------------|--|--|---|
| 31 U.S.C.3729(a)      | False Claims Act Violations   | 28 CFR 85.3 (a) (9) | Min 10,781;<br>Max 21,563              | Min 10,957;<br>Max 21,916              | Min 11,181;<br>Max 22,363               |
| 31 U.S.C.3802 (a) (1) | Program Fraud Civil Remedies Act; Violations Involving False Claim (per claim)        | 28 CFR 71.3 (a)     | 10,781                                 | 10,957                                 | 11,181                                  |
| 31 U.S.C.3802 (a) (2) | Program Fraud Civil Remedies Act; Violation Involving False Statement (per statement) | 28 CFR 71.3 (f)     | 10,781                                 | 10,957                                 | 11,181                                  |

**Conscientious Employee Protection Act, “Whistleblower Act”, N.J.S.A. 34-19-4**

New Jersey law prohibits an employer from taking any retaliatory action against an employee because the employee does any of the following:

- a. Discloses, or threatens to disclose, to a supervisor or to a public body, an activity, policy or practice of the employer or another employer, with whom there is a business relationship, that the employee reasonably believes is in violation of a law, or a rule or regulation issued under the law, or, in the case of an employee who is a licensed or certified healthcare professional, reasonably believes constitutes improper quality of patient care;
- b. Provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any violation of law, or a rule or regulation issued under the law by the employer or another employer, with whom there is a business relationship, or, in the case of an employee who is a licensed or certified healthcare professional, provides information to, or testifies, before, any public body conducting an investigation, hearing or inquiry into quality of patient care; or
- c. Provides information involving deception of, or misrepresentation to, any shareholder, investor, client, patient, customer, employee, former employee, retiree or /pensioner of the employer or governmental entity.
- d. Provides information regarding any perceived criminal or fraudulent activity, policy or practice of deception or misrepresentation which the employee reasonably believes may defraud any shareholder, investor, client, patient, customer, employee, former employee, retiree or pensioner of the employee or any governmental entity.
- e. Objects to, or refuses to participate in, any activity, policy or practice which the employee reasonably believes:
  - i. Is in violation of a law, or a rule or regulation issued under the law or, if the employee is a licensed or certified health care professional, constitutes improper quality of patient care.
  - ii. is fraudulent or criminal; or
  - iii. is incompatible with a clear mandate of public policy concerning the public health, safety or welfare or protection of the environment. N.J.S.A. 34:19-3.

The protection against retaliation, when a disclosure is made to a public body, does not apply unless the employee has brought the activity, policy or practice to the attention of a supervisor of the employee in writing and given the employer a reasonable opportunity to correct the activity, policy or practice. However, a disclosure is not required

where the employee reasonably believes that the activity, policy or practice is known to one or more supervisors of the employer or where the employee fears physical harm as a result of the disclosure, provided the situation is an emergency matter.

Alternative options for reporting fraud:

Medicaid Fraud Division Hotline: 888-937-2835

New Jersey Insurance Fraud Prosecutor Hotline: 877-55-FRAUD

**New Jersey False Claims Act Supplementing Title 2A of the New Jersey Statutes and amending P.L. 1968, c. 413 as approved on January 13, 2008, effective March 13, 2008**

The Attorney General for the State of New Jersey and whistleblowers may initiate false claims litigation under guidelines similar to the Federal False Claims Act (31 U.S.C. 3729-3733 and 3801-3812) summarized on pages 1-4 of this policy. Violations of the New Jersey False Claims Act are subject to penalties pursuant to Section 17 of P.L. 1968, C.30:4d-17 as amended,

Civil penalties under N.J.S. 30:4D-17(e) (3) range from \$2,000 per false claim to the same level provided by the Federal False Claims Act, currently between \$5,500 and \$11,000 per false claim or imprisonment of not more than 3 years for both. The New Jersey False Claims Act can be viewed in its entirety at:

[http://www.njleg.state.nj.us/2006/PL07/265\\_HTM](http://www.njleg.state.nj.us/2006/PL07/265_HTM)

**Policy and Procedures for Detecting and Preventing Fraud**

The Arc of Hunterdon County feels strongly about our ethical responsibilities that a formal program was adopted, and a Chief Compliance Officer was appointed to oversee it. As an essential element of the Arc of Hunterdon County, standards of conduct include an obligation by its workforce and agents to report through the Compliance Action Plan, reporting mechanisms, any issues or conduct that could lead to fraud, abuse or waste. Policies are in place to protect the workforce from retaliation. It is hoped that employees feel free to discuss, with their supervisors, any compliance issues, however, if this is not the case, the Compliance Hotline can be used anonymously.

**New Jersey Insurance Fraud Prevention Act, N.J.S.A. 17:33A-1 et. seq. Effective 2009.**

17:33A-1. Short title

This act shall be known and may be cited as the "New Jersey Insurance Fraud Prevention Act."

§ 17:33A-2. Purpose of act

The purpose of this act is to confront aggressively the problem of insurance fraud in New Jersey by facilitating the detection of insurance fraud, eliminating the occurrence of such fraud through the development of fraud prevention programs, requiring the restitution of fraudulently obtained insurance benefits, and reducing the amount of premium dollars used to pay fraudulent claims.

<https://www.nj.gov/oag/insurancefraud/pdfs/fraud-prevention-act.pdf>

**17:33A-5. Remedies; penalties; fund established**

5. a. Whenever the commissioner determines that a person has violated any provision of P.L. 1983, c.320 (C.17:33A-1 et seq.), the commissioner may either:

- (1) bring a civil action in accordance with subsection b. of this section; or
- (2) levy a civil administrative penalty and order restitution in accordance with subsection c. of this section.

In addition to or as an alternative to the remedies provided in this section, the commissioner may request the Attorney General to bring a criminal action under applicable criminal statutes. Additionally, nothing in this section shall be construed to preclude the commissioner from referring the matter to appropriate state licensing authorities, including the insurance producer licensing section in the Department of Banking and Insurance, for consideration of licensing actions, including license suspension or revocation.

b. Any person who violates any provision of P.L.1983, c.320 (C.17:33A-1 et seq.) shall be liable, in a civil action brought by the commissioner in a court of competent jurisdiction, for a penalty of not more than \$5,000 for the first violation, \$10,000 for the second violation and \$15,000 for each subsequent violation. The penalty shall be paid to the commissioner to be used in accordance with subsection e. of this section. The court shall also award court costs and reasonable attorneys' fees to the commissioner.

c. The commissioner is authorized to assess a civil and 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 of any provision of P.L.1983, c.320 (C.17:33A-1 et seq.) and to order restitution to any insurance company or other person who has suffered a loss as a result of a violation of P.L.1983, c.320 (C.17:33A-1 et seq.). No assessment shall be levied pursuant to this subsection until the violator has been notified by certified mail or personal service. The notice shall contain a concise statement of facts providing the basis for the determination of a violation of P.L.1983, c.320 (C.17:33A-1 et seq.), the provisions of that act violated, a statement of the amount of civil penalties assessed and a statement of the party's right to a hearing in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The noticed party shall have 20 calendar days from receipt of the notice within which to deliver to the commissioner a written request for a hearing containing an answer to the statement of facts contained in the notice. After the hearing and upon a finding that a violation has occurred, the commissioner may issue a final order assessing up to the amount of the penalty in the notice, restitution, and costs of prosecution, including attorneys' fees. If no hearing is requested, the notice shall become a final order after the expiration of the 20-day period. Payment of the assessment is due when a final order is issued, or the notice becomes a final order.

Any penalty imposed pursuant to this subsection may be collected with costs in a summary proceeding pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq. The Superior Court shall have jurisdiction to enforce the provisions of the "the penalty enforcement law" in connection with P.L.1983, c.320 (C.17:33A-1 et seq.). Any penalty collected pursuant to this subsection shall be used in accordance with subsection e. of this section.

d. Nothing in this section shall be construed to prohibit the commissioner and the person or practitioner alleged to be guilty of a violation of this act from entering into a written agreement in which the person or practitioner does not admit or deny the charges but consents to payment of the civil penalty. A consent agreement may contain a provision that it shall not be used in a subsequent civil or criminal proceeding relating to any violation of this act, but notification thereof shall be made to a licensing authority in the same manner as required pursuant to subsection c. of section 10 of P.L.1983, c.320 (C.17:33A-10). The existence of a consent agreement under this subsection shall not preclude any licensing authority from taking appropriate administrative action against a licensee over which it has regulatory authority, nor shall such a consent agreement preclude referral to law enforcement for consideration of criminal prosecution.

e. The New Jersey Automobile Full Insurance Underwriting Association and Market Transition Facility Auxiliary Fund (hereinafter referred to as the "fund") is established as a non-lapsing, revolving fund into which shall be deposited all revenues from the civil penalties imposed pursuant to this

section. Interest received on moneys in the fund shall be credited to the fund. The fund shall be administered by the Commissioner of Banking and Insurance and shall be used to help defray the operating expenses of the New Jersey Automobile Full Insurance Underwriting Association created pursuant to P.L.1983, c.65 (C.17:30E-1 et seq.) or shall be used to help defray the operating expenses of the Market Transition Facility created pursuant to section 88 of P.L.1990, c.8 (C.17:33B-11).

L.1983,c.320,s.5; amended 1987, c.358, s.1; 1991, c.331, s.3; 1994, c.57, s.19; 1997, c.151, s.4

#### **17:33A-4. Violations**

4. a. A person or a practitioner violates this act if he:

(1) 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 or the "Unsatisfied Claim and Judgment Fund Law," P.L.1952, c.174 (C.39:6-61 et seq.), knowing that the statement contains any false or misleading information concerning any fact or thing material to the claim; or

(2) Prepares or makes any written or oral statement that is intended to be presented to any insurance company, the Unsatisfied Claim and Judgment Fund or any claimant thereof in connection with, or in support of or opposition to any claim for payment or other benefit pursuant to an insurance policy or the "Unsatisfied Claim and Judgment Fund Law," P.L.1952, c.174 (C.39:6-61 et seq.), knowing that the statement contains any false or misleading information concerning any fact or thing material to the claim; or

(3) Conceals or knowingly fails 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.

(4) Prepares or makes any written or oral statement, intended to be presented to any insurance company or producer for the purpose of obtaining:

(a) a motor vehicle insurance policy, that the person to be insured maintains a principal residence in this State when, in fact, that person's principal residence is in a state other than this State; or

(b) an insurance policy, knowing that the statement contains any false or misleading information concerning any fact or thing material to an insurance application or contract; or

(5) Conceals or knowingly fails to disclose any evidence, written or oral, which may be relevant to a finding that a violation of the provisions of paragraph (4) of this subsection a. has or has not occurred.

b. A person or practitioner violates this act if he knowingly assists, conspires with, or urges any person or practitioner to violate any of the provisions of this act.

c. A person or practitioner violates this act if, due to the assistance, conspiracy or urging of any person or practitioner, he knowingly benefits, directly or indirectly, from the proceeds derived from a violation of this act.

d. A person or practitioner who is the owner, administrator or employee of any hospital violates this

act if he knowingly allows 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 this act.

e. A person or practitioner violates this act if, for pecuniary gain, for himself or another, he directly or indirectly solicits any person or practitioner to engage, employ or retain either himself or any other person to manage, adjust or prosecute any claim or cause of action, against any person, for damages for negligence, or, for pecuniary gain, for himself or another, directly or indirectly solicits other persons to bring causes of action to recover damages for personal injuries or death, or for pecuniary gain, for himself or another, directly or indirectly solicits other persons to make a claim for personal injury protection benefits pursuant to P.L.1972, c.70 (C.39:6A-1 et seq.); provided, however, that this subsection shall not apply to any conduct otherwise permitted by law or by rule of the Supreme Court.

L.1983,c.320,s.4; amended 1991, c.331, s.2; 1995, c.132, s.1; 1997, c.151, s.3.

<https://www.nj.gov/oag/insurancefraud/pdfs/fraud-prevention-act>.

# Health Insurance Portability and Accountability Act of 1996 (HIPAA)

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) required the Secretary of the U.S. Department of Health and Human Services (HHS) to develop regulations protecting the privacy and security of certain health information.<sup>1</sup> To fulfill this requirement, HHS published what are commonly known as the HIPAA [Privacy Rule](#) and the HIPAA [Security Rule](#). The Privacy Rule, or *Standards for Privacy of Individually Identifiable Health Information*, establishes national standards for the protection of certain health information. The *Security Standards for the Protection of Electronic Protected Health Information* (the Security Rule) establish a national set of security standards for protecting certain health information that is held or transferred in electronic form. The Security Rule operationalizes the protections contained in the Privacy Rule by addressing the technical and non-technical safeguards that organizations called “covered entities” must put in place to secure individuals’ “electronic protected health information” (e-PHI). Within HHS, the Office for Civil Rights (OCR) has responsibility for enforcing the Privacy and Security Rules with voluntary compliance activities and civil money penalties.

A major goal of the Security Rule is to protect the privacy of individuals’ health information while allowing covered entities to adopt new technologies to improve the quality and efficiency of patient care. Given that the health care marketplace is diverse, the Security Rule is designed to be flexible and scalable so a covered entity can implement policies, procedures, and technologies that are appropriate for the entity’s particular size, organizational structure, and risks to consumers’ e-PHI.

This is a summary of key elements of the Security Rule and not a complete or comprehensive guide to compliance. Entities regulated by the Privacy and Security Rules are obligated to comply with all their applicable requirements and should not rely on this summary as a source of legal information or advice. To make it easier to review the complete requirements of the Security Rule, provisions of the Rule referenced in this summary are cited in the [end notes](#). Visit our [Security Rule](#) section to view the entire Rule, and for additional helpful information about how the Rule applies. In the event of a conflict between this summary and the Rule, the Rule governs.

## Statutory and Regulatory Background

The *Administrative Simplification* provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA, Title II) required the Secretary of HHS to publish national standards for the security of electronic protected health information (e-PHI), electronic exchange, and the privacy and security of health information.

HIPAA called on the Secretary to issue security regulations regarding measures for protecting the integrity, confidentiality, and availability of e-PHI that is held or transmitted by covered entities. HHS developed a proposed rule and released it for public comment on August 12, 1998. The Department received approximately 2,350 public comments. The final regulation, the Security Rule, was published February 20, 2003.<sup>2</sup> The Rule specifies a series of administrative, technical, and physical security procedures for covered entities to use to assure the confidentiality, integrity, and availability of e-PHI.

The text of the final regulation can be found at 45 CFR [Part 160](#) and [Part 164](#), Subparts A and C.

## Who is Covered by the Security Rule?

The Security Rule applies to health plans, health care clearinghouses, and to any health care provider who transmits health information in electronic form in connection with a transaction for which the Secretary of HHS has adopted standards under HIPAA (the “covered entities”) and to their business associates.

## Business Associates

The HITECH Act of 2009 expanded the responsibilities of business associates under the HIPAA Security Rule. HHS developed regulations to implement and clarify these changes.

## What Information is Protected

**Electronic Protected Health Information.** The HIPAA Privacy Rule protects the privacy of individually identifiable health information, called protected health information (PHI). The Security Rule protects a subset of information covered by the Privacy Rule, which is all individually identifiable health information a covered entity creates, receives, maintains or transmits in electronic form. The Security Rule calls this information “electronic protected health information” (e-PHI).<sup>3</sup> The Security Rule does not apply to PHI transmitted orally or in writing.

## General Rules

The Security Rule requires covered entities to maintain reasonable and appropriate administrative, technical, and physical safeguards for protecting e-PHI.

Specifically, covered entities must:

1. Ensure the confidentiality, integrity, and availability of all e-PHI they create, receive, maintain or transmit.
2. Identify and protect against reasonably anticipated threats to the security or integrity of the information.
3. Protect against reasonably anticipated, impermissible uses or disclosures; and
4. Ensure compliance by their workforce.<sup>4</sup>

The Security Rule defines “confidentiality” to mean that e-PHI is not available or disclosed to unauthorized persons. The Security Rule's confidentiality requirements support the Privacy Rule's prohibitions against improper uses and disclosures of PHI. The Security rule also promotes the two additional goals of maintaining the integrity and availability of e-PHI. Under the Security Rule, “integrity” means that e-PHI is not altered or destroyed in an unauthorized manner. “Availability” means that e-PHI is accessible and usable on demand by an authorized person.<sup>5</sup>

HHS recognizes that covered entities range from the smallest provider to the largest, multi-state health plan. Therefore, the Security Rule is flexible and scalable to allow covered entities to analyze their own needs and implement solutions appropriate for their specific environments. What is appropriate for a particular covered entity will depend on the nature of the covered entity's business, as well as the covered entity's size and resources.

Therefore, when a covered entity is deciding which security measures to use, the Rule does not dictate those measures but requires the covered entity to consider:

- Its size, complexity, and capabilities,
- Its technical, hardware, and software infrastructure,
- The costs of security measures, and

- The likelihood and possible impact of potential risks to e-PHI.<sup>6</sup>

Covered entities must review and modify their security measures to continue protecting e-PHI in a changing environment.<sup>7</sup>

## **Risk Analysis and Management**

The Administrative Safeguards provisions in the Security Rule require covered entities to perform risk analysis as part of their security management processes. The risk analysis and management provisions of the Security Rule are addressed separately here because, by helping to determine which security measures are reasonable and appropriate for a particular covered entity, risk analysis affects the implementation of all of the safeguards contained in the Security Rule.

A risk analysis process includes, but is not limited to, the following activities:

- Evaluate the likelihood and impact of potential risks to e-PHI
- Implement appropriate security measures to address the risks identified in the risk analysis.
- Document the chosen security measures and, where required, the rationale for adopting those measures; and
- Maintain continuous, reasonable, and appropriate security protections.<sup>11</sup>

Risk analysis should be an ongoing process, in which a covered entity regularly reviews its records to track access to e-PHI and detect security incidents,<sup>12</sup> periodically evaluates the effectiveness of security measures put in place,<sup>13</sup> and regularly reevaluates potential risks to e-PHI.<sup>14</sup>

## **Administrative Safeguards**

**Security Management Process.** As explained in the previous section, a covered entity must identify and analyze potential risks to e-PHI, and it must implement security measures that reduce risks and vulnerabilities to a reasonable and appropriate level.

**Security Personnel.** A covered entity must designate a security official who is responsible for developing and implementing its security policies and procedures.<sup>15</sup>

**Information Access Management.** Consistent with the Privacy Rule standard limiting uses and disclosures of PHI to the "minimum necessary," the Security Rule requires a covered entity to implement policies and procedures for authorizing access to e-PHI only when such access is appropriate based on the user or recipient's role (role-based access).<sup>16</sup>

**Workforce Training and Management.** A covered entity must provide for appropriate authorization and supervision of workforce members who work with e-PHI.<sup>17</sup> A covered entity must train all workforce members regarding its security policies and procedures,<sup>18</sup> and must have and apply appropriate sanctions against workforce members who violate its policies and procedures.<sup>19</sup>

**Evaluation.** A covered entity must perform a periodic assessment of how well its security policies and procedures meet the requirements of the Security Rule.<sup>20</sup>



## Physical Safeguards

**Facility Access and Control.** A covered entity must limit physical access to its facilities while ensuring that authorized access is allowed.<sup>21</sup>

**Workstation and Device Security.** A covered entity must implement policies and procedures to specify proper use of and access to workstations and electronic media.<sup>22</sup> A covered entity also must have in place policies and procedures regarding the transfer, removal, disposal, and re-use of electronic media, to ensure appropriate protection of electronic protected health information (e-PHI).<sup>23</sup>

## Technical Safeguards

**Access Control.** A covered entity must implement technical policies and procedures that allow only authorized persons to access electronic protected health information (e-PHI).<sup>24</sup>

**Audit Controls.** A covered entity must implement hardware, software, and/or procedural mechanisms to record and examine access and other activity in information systems that contain or use e-PHI.<sup>25</sup>

**Integrity Controls.** A covered entity must implement policies and procedures to ensure that e-PHI is not improperly altered or destroyed. Electronic measures must be put in place to confirm that e-PHI has not been improperly altered or destroyed.<sup>26</sup>

**Transmission Security.** A covered entity must implement technical security measures that guard against unauthorized access to e-PHI that is being transmitted over an electronic network.<sup>27</sup>

## Required and Addressable Implementation Specifications

Covered entities are required to comply with every Security Rule "Standard." However, the Security Rule categorizes certain implementation specifications within those standards as "addressable," while others are "required." The "required" implementation specifications must be implemented. The "addressable" designation does not mean that an implementation specification is optional. However, it permits covered entities to determine whether the addressable implementation specification is reasonable and appropriate for that covered entity. If it is not, the Security Rule allows the covered entity to adopt an alternative measure that achieves the purpose of the standard, if the alternative measure is reasonable and appropriate.<sup>28</sup>

## Organizational Requirements

**Covered Entity Responsibilities.** If a covered entity knows of an activity or practice of the business associate that constitutes a material breach or violation of the business associate's obligation, the covered entity must take reasonable steps to cure the breach or end the violation.<sup>29</sup> Violations include the failure to implement safeguards that reasonably and appropriately protect e-PHI.

**Business Associate Contracts.** HHS developed regulations relating to business associate obligations and business associate contracts under the HITECH Act of 2009.

## Policies and Procedures and Documentation Requirements

A covered entity must adopt reasonable and appropriate policies and procedures to comply with the provisions of the Security Rule. A covered entity must maintain, until six years after the later of the date of their creation or last effective date, written security policies and procedures and written records of required actions, activities or assessments.<sup>30</sup>

**Updates.** A covered entity must periodically review and update its documentation in response to environmental or organizational changes that affect the security of electronic protected health information (e-PHI).<sup>31</sup>

## **State Law**

**Preemption.** In general, State laws that are contrary to the HIPAA regulations are preempted by the federal requirements, which means that the federal requirements will apply.<sup>32</sup> “Contrary” means that it would be impossible for a covered entity to comply with both the State and federal requirements, or that the provision of State law is an obstacle to accomplishing the full purposes and objectives of the Administrative Simplification provisions of HIPAA.<sup>33</sup>

## **Enforcement and Penalties for Noncompliance**

**Compliance.** The Security Rule establishes a set of national standards for confidentiality, integrity and availability of e-PHI. The Department of Health and Human Services (HHS), Office for Civil Rights (OCR) is responsible for administering and enforcing these standards, in concert with its enforcement of the Privacy Rule, and may conduct complaint investigations and compliance reviews.

<https://www.hhs.gov/hipaa/for-professionals/security/laws-regulations/index.html>

## Compliance Action Plan: General Standards of Conduct

The Arc of Hunterdon County personnel, in addition to all vendors and representatives alike, shall adhere to the high standards of ethical conduct as well as comply with the assistance of The Arc of Hunterdon County's efforts in upholding all applicable laws and regulations along with any/all third-party payor program requirements.

As a representative of The Arc of Hunterdon County it is your responsibility to comply with the following policies and standards:

1. ***Ethical and professional standards:*** All representatives of The Arc of Hunterdon County shall both comply with as well as perform their services consistent with high ethical and professional standards. They shall treat consumers, co-workers, and others in a professional manner with integrity, honesty, fairness, dignity, and respect.
2. ***Policies and procedures:*** It is the responsibility of all personnel and representatives of The Arc of Hunterdon County to comply with each of the applicable policies and procedures put forth by the Arc of Hunterdon County, including, but not limited to, those policies and procedures relevant to the Compliance Action Plan.
3. ***Laws, regulations, and program requirements:*** Both Personnel as well as representatives alike of The Arc of Hunterdon County must comply with all applicable federal and state laws, regulations, in addition to third-party payor program requirements.
4. ***Non-discrimination.*** Discrimination of any kind shall not be tolerated by any The Arc of Hunterdon County personnel, consumers, or representatives. This includes but is not limited to any forms of discrimination related to an individual's race, color, sex, religion, age, national origin, ancestry, disability, or sexual orientation.
5. ***Offering or receiving items of value to induce referrals:*** Federal and state laws prohibit offering or receiving anything of value to induce referrals for healthcare business unless certain conditions are met. The Arc of Hunterdon County personnel shall not offer, solicit, pay or accept anything of value in exchange for healthcare referrals without first obtaining written approval from the Compliance Officer. This applies to offering or receiving any money, gifts, free or discounted items or services, professional courtesies, or other arrangements with the intent to induce referrals. This applies to any such transactions involving potential referral sources, including transactions with other health care providers, vendors, or consumers. Violations may subject The Arc of Hunterdon County and its personnel to criminal and administrative penalties.
6. ***Financial relationships with physicians and other referral sources:*** Federal and state laws affect contracts, agreements, and other financial relationships with physicians, practitioners, vendors, and other referral sources.
  - a. Representatives of The Arc of Hunterdon County, along with any and all personnel, shall not enter into any contract or other financial arrangement with, or give or receive anything of value to or from, an outside physician, a physician's family member, or other referral source without the prior written approval of the Compliance Officer.
  - b. If The Arc of Hunterdon County has a contract or other financial relationship with an outside physician or a member of the physician's family, The Arc of Hunterdon County personnel shall not bill Medicare for any items or services referred by that physician without the prior written approval of the Compliance Officer.
  - c. The Arc of Hunterdon County personnel and representatives must strictly comply with the terms of any and all approved contracts or other financial arrangements pertaining to outside

physicians, their family members, or referral sources. Failure to comply or implementing improper modifications of such contracts or arrangements have the potential to violate applicable laws and jeopardize The Arc of Hunterdon County's standing as well as legal fines.

7. ***Improper inducements to Medicare or Medicaid beneficiaries:*** Inducements to Medicare, Medicaid, or other government beneficiaries may violate applicable law. The Arc of Hunterdon County personnel and its representatives shall not waive or discount government beneficiary co-pays unless such discount complies with The Arc of Hunterdon County's charity care policy. The Arc of Hunterdon County personnel as well as any representative shall not offer any other discount, gift, free items or service, or other inducements to government beneficiaries without first obtaining written approval from the Compliance Officer.
8. ***Professional courtesies:*** The Arc of Hunterdon County personnel nor any of its representatives shall offer or receive any free or discounted items or services to or from other health care providers, their family members, or their office staff unless such offer is consistent with The Arc of Hunterdon County's Professional Personnel Policy (Section 601) or the offer has been approved in writing by the Compliance Officer.
9. ***Improper billing activities:*** *Neither representatives nor personnel of* The Arc of Hunterdon County shall engage in false, fraudulent, improper, or questionable billing practices. Such improper activities include, but are not limited to:
  - a. Billing for items or services that were not actually rendered.
  - b. Billing for or rendering items or services that were not authorized in the consumer's ISP.
  - c. Submitting a claim for payment without adequate documentation to support the claim.
  - d. Signing a form for a physician.
  - e. Signing authorizations for a client
  - f. Interfering with a payment made to a client (I.E. Signing a check made out to a client
  - g. Improperly altering medical records.
  - h. Using a billing code that provides a higher payment rate than the correct billing code (i.e. "upcoding").
  - i. Submitting bills in fragmented fashion to maximize reimbursement even though third-party payors require the procedures to be billed together (i.e. "unbundling").
  - j. Submitting more than one claim for the same service (i.e. "duplicate billing").
10. ***Unfair competition and deceptive trade practices:*** Federal and state antitrust laws prevent certain anti-competitive conduct, including collusive agreements among competitors to set prices; divide consumer care or services; boycott other entities; etc. The Arc of Hunterdon County personnel as well as all of its representatives should not engage in collusive discussions with competitors over such things as prices, employee wages, services to be rendered or eliminated, or division of consumers or consumer services without the Compliance Officer's prior written approval. Similarly, The Arc of Hunterdon County personnel nor any of its representatives shall engage in any deceptive acts or practices relating to the Arc of Hunterdon County.
11. ***Privacy and confidentiality:*** The Arc of Hunterdon County personnel shall maintain the confidentiality of consumers' protected health information as required by The Arc of Hunterdon County's privacy policies and applicable law, including, but not limited to, the Health Insurance Portability and Accountability Act ("HIPAA") and its accompanying regulations, 45 C.F.R. part 164 and any other accompanying regulations or addendums as set forth under the Health Insurance Portability and Accountability Act. The Arc of Hunterdon County personnel as well as any representative or vendor associated with The Arc of Hunterdon County shall not access any consumer information unless they are authorized to and they have a need to access the information because of their job duties. To the extent feasible and allowed by law, The Arc of Hunterdon County personnel, representative, or vendor shall maintain the confidentiality of communications and records containing confidential information concerning co-workers; communications and records relating to the Arc of Hunterdon

County's confidential financial or business operations; documents prepared in anticipation of litigation; and communications with legal counsel for The Arc of Hunterdon County. This section shall not be construed to prohibit activity protected by the National Labor Relations Act.

12. ***Entities that contract with The Arc of Hunterdon County:*** The Arc of Hunterdon County personnel as well as any and all representatives shall ensure that vendors and other entities which contract with The Arc of Hunterdon County are aware of The Arc of Hunterdon County's Compliance Action Plan. If a contract or arrangement with an outside entity implicates any of the compliance concerns discussed in the Compliance Action Plan, bring up the matter to the Compliance Officer for review. Nothing in this policy or Compliance Action Plan shall be construed as an undertaking by The Arc of Hunterdon County to inspect, assume liability for or guarantee the performance of work or activities by independent contractors or other agents.
13. ***Questions concerning the Compliance Action Plan:*** The Arc of Hunterdon County personnel shall seek clarification from or approval by the Compliance Officer before engaging in actions or transactions if there is any question concerning whether the action or transaction complies with applicable laws, regulations, program requirements, or The Arc of Hunterdon County policies.
14. ***Report suspected violations:*** The Arc of Hunterdon County may have an obligation to promptly repay money it improperly receives from third party payors within 60 days. It is essential that The Arc of Hunterdon County personnel:
  - a. Comply with applicable laws, regulations, and policies; and
  - b. Immediately report suspected violations or compliance concerns to their supervisor, department leader, or the Compliance Officer as set forth in the Compliance Action Plan: Communication About Compliance Issues Policy. Anonymous reports can be made on The Arc of Hunterdon County's website both in the "contact us" section as well as on the employee portal. The failure to report a suspected violation may subject The Arc of Hunterdon County personnel to appropriate discipline.
15. ***Non-retaliation:*** The Arc of Hunterdon County personnel nor any of its representatives shall retaliate against any person for reporting a suspected violation of any law, regulation, program requirement or The Arc of Hunterdon County policy relevant to the Compliance Action Plan, in accordance with the Conscientious Employee Protection Act (i.e. "Whistleblower Act").
16. ***Good faith reporting:*** *The Arc of Hunterdon County will not in any way retaliate against personnel or a representative for reporting any potential misconduct to the Compliance Officer if that claim was made in good faith. The Arc of Hunterdon County will hold no punitive or retaliatory stance against a good faith reporting, however if any representative or personnel of The Arc of Hunterdon County falsifies an allegation, they may face disciplinary action up to and possibly including termination.*

All personnel of The Arc of Hunterdon County shall be required to review these Standards of Conduct and sign below confirming that they have reviewed the Standards as set forth under the General Standards of Conduct

# The Arc of Hunterdon County Personnel Acknowledgement of General Standards of Conduct

If the Arc of Hunterdon County personnel have a question about the proper standard or procedure for documenting or submitting a claim, they should contact the Compliance Officer as described below.

I hereby acknowledge that I have received and reviewed The Arc of Hunterdon County's Standards of Conduct. I have had any questions I had answered, and that I agree to be bound by and shall comply with the Standards of Conduct. I understand that failure to comply with the Standards of Conduct or other policies set forth by The Arc of Hunterdon County may subject me to immediate adverse action, which may include suspension or termination of employment or contract.

Name (print): \_\_\_\_\_

Job Title: \_\_\_\_\_

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

## **Employee Acknowledgement:**

### **Health Insurance Portability and Accountability Act of 1996 (HIPAA)**

#### **What is HIPAA**

HIPAA is a federal law that you need to know about as a part of your job with the Arc of Hunterdon County.

The Health Insurance Portability and Accountability Act of 1996 Public Law 104-191 (HIPAA) was passed by Congress to reform the insurance market and simplify health care administrative processes. The Act establishes federal rules to standardize “transaction and code sets” used to transmit protected health information. These rules also protect the privacy and security of protected health information.

Prior to HIPAA, no generally accepted set of security standards or general requirements for protecting health information existed in the health care industry. At the same time, new technologies were evolving, and the health care industry began to move away from paper processes and rely more heavily on the use of electronic information systems to pay claims, answer eligibility questions, provide health information and conduct a host of other administrative and clinically based functions.

#### **Will HIPAA Affect You?**

If you handle information that pertains to a service recipient or staff you will be affected by HIPAA; more specifically, if you have any contact with “protected health information” you will have to comply with HIPAA regulations. Also, if you are involved with Arc of Hunterdon County billing, direct client service, human resources, compliance, or any other expression that allows access to any personal information for both clients as well as employees you will be directly impacted by HIPAA.

### **HIPAA WILL AFFECT EVERY EMPLOYEE WHO HAS ACCESS TO “PROTECTED HEALTH INFORMATION”**

#### **What is Protected Health Information?**

Protected health information (PHI) is individually identifiable health information that is transmitted or maintained, in any form or medium, by an entity covered under HIPAA administrative simplification regulations.

Individually identifiable health information, including demographic information, whether oral or recorded in any form or medium that:

1. Is created or received by a health care provider, health plan, public health authority, employer, life insurer, school/university, or health care clearing house in the normal course of business

2. Relates to the past, present, or future physical and/or mental health or condition of an individual, the provision of healthcare to an individual or future physical or mental health or condition of an individual; the provision of healthcare to an individual; or the past, present, or future payment for the provision of healthcare to an individual.
3. Holds any identifying characteristics of an individual whether it be physically, medically, socioeconomically, or in any way

If you keep, maintain, or have access to any information that contains any of the following items, that health information is considered to be individually identifiable:

- Name
- Medical Record Number
- Address
- Employer
- Social Security Number
- Date of Birth
- Levels of Service/Service Involvement
- Name of Relatives/Household
- Account/Health Plan Number
- Telephone Numbers
- Medical Information
- Banking Information
- Certificate/License Number
- Photograph

### **What do the Privacy Rules Cover?**

The privacy regulations address who has access to protected health information and the rights of individuals to keep information about themselves from being improperly disclosed. This rule protects information that is written, spoken, or in electronic form.

In our day-to-day jobs of providing services to persons we have access to very private information about service recipients that is vital in order for us to do our jobs. We must heighten our awareness of who can see and/or hear information about a service recipient. We must be mindful that we only access information that is necessary to do our job and to discuss only that information with others who have a need to know in order for them to do their jobs.

### **How can The Arc of Hunterdon staff protect PHI?**

- Close doors or draw privacy curtains/screens
- Conduct discussions so that others may not overhear them
- Don't leave medical records where others can see them or access them
- Medical test results only shared on a need to know basis
- PHI info should NOT be shared or viewable in public areas
- Don't leave copies of PHI at copy machines, printers, or fax machines.
- Don't leave PHI exposed in mailboxes or conference rooms.
- Don't share computer passwords or leave them visible
- Don't leave computer files open when leaving unlocked or shared work area
- Don't store PHI information on the computer out in the open, rather utilize individualized and protected folders on the computer
- Secure PHI when no one is in the area, lock file cabinets and office doors



- Safeguard PHI when records are in your possession
- Return medical records to appropriate location
- Dispose of paper containing PHI properly
- Communicate only using client initials rather than personal information
- Do not leave PHI for shredding in unlocked/undesignated area
- Do not leave individual/employee PHI lists publicly posted
- Do not leave records opened and unattended
- Do not utilize personal electronic devices for PHI information

## **Arc of Hunterdon Mobile Phone Policy**

The use of personal mobile devices to communicate any client information including but not limited to names, initials, medical information, photographs, PHI, status, etc. is strictly prohibited.

Personal mobile devices in and of themselves are not protected as a secure form of communication. The Arc of Hunterdon County does not permit the blanket use of personal mobile devices due to the increased exposure which can put PHI at risk. These risks include but are not limited to:

- Physical loss or theft of the device
- Transmitting data via text or email over an unsecured Wi-Fi network
- Using an outdated operating system
- Inadequate or lack of authentication
- Sharing mobile devices with others
- Mobile devices are easily stolen or lost
- Many mobile users skip using password protection on their devices
- Lack of device encryption

All agency communication will be channeled through either The Arc of Hunterdon County's secured email system or through the approved app purchased and secured by The Arc of Hunterdon County. Any PHI information or inter-agency communication is to be done through either encrypted emails or through the available communication app. The communication app can be downloaded at no cost to the staff member onto their personal device. This will allow all staff to remain in communication with the agency as well as its representatives as well as providing an outlet to securely communicate on the behalf of the clients. If you do not wish to use the app on your personal mobile device, an agency device will be made available to you on a case by case basis determined by your direct supervisor.

**EMPLOYEE ACKNOWLEDGEMENT**

**HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPAA)**

By signing below, I am acknowledging my awareness and receipt of the requirements of the *Health Insurance Portability and Accountability Act (HIPAA) of 1996* and that I have read and agree to comply with *HIPAA* as an agent of The Arc of Hunterdon County.

I further acknowledge and understand that, as a representative, employee, intern, or volunteer with The Arc of Hunterdon County, I am prohibited from releasing any protected health information (PHI) which may come to my attention, throughout the course of my duties, to any unauthorized person or entity.

As an employee, volunteer, or representative I am committed to securing and protecting all client PHI and other personal information. I am committed to utilizing secure communication practices through the provided app as well as through encrypted emails.

Moreover, I acknowledge and understand that any breach of confidentiality, client or otherwise, resulting from my written or verbal release of health information or records provides grounds for disciplinary action, which may include termination as an employee of the Arc of Hunterdon County.

Employees Name \_\_\_\_\_ Department/Location \_\_\_\_\_

Employees Signature \_\_\_\_\_ Date \_\_\_\_\_

## Compliance Action Plan: Board of Directors Responsibilities

The Board of Directors of The Arc of Hunterdon County is responsible for ensuring that The Arc of Hunterdon County has an effective Compliance Plan set in place; Has staffed a qualified Compliance officer who is maintaining a Compliance Committee which is made up of appropriately qualified individuals; and receiving regular reports as well as taking appropriate action to ensure that The Arc of Hunterdon County is following the Compliance Plan to its fullest.

In addition to any other actions that may be necessary and appropriate to fulfill the purpose of this Compliance Action Plan, the Board of Directors shall:

1. Ensure that the Compliance Officer is staffed by a qualified candidate.
2. Ensure that the Compliance Officer is maintaining a Compliance Committee as well as is utilizing the committee to its fullest.
3. Authorize reasonable and appropriate funding and staff to implement the Compliance Action Plan, including, but not limited to, that which is necessary to allow the Compliance Officer and Compliance Committee to reasonably perform their responsibilities. In so doing, the Board of Directors shall give due consideration to the recommendations of the Administrator.
4. Receive and review reports from the Compliance Officer on a quarterly basis, or more frequently as deemed necessary by the Board of Directors, Administrator, or Compliance Officer.
5. Take appropriate action on any compliance issues brought before the Board of Directors consistent with this Compliance Action Plan and applicable bylaws, rules and regulations, including, but not limited to, ensuring that compliance issues are appropriately investigated and resolved consistent with the requirements of applicable law; that remedial efforts are implemented to avoid or correct compliance concerns; and that The Arc of Hunterdon County personnel are disciplined as appropriate.
6. Participate in annual training concerning issues relevant to the Compliance Action Plan as set forth in the Compliance Action Plan: Education and Training Policy.
7. Maintain the confidentiality of any compliance issues brought before it with applicable policies, laws, and regulations set forth by The Arc of Hunterdon County.

Name (print): \_\_\_\_\_ Position: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## Compliance Action Plan: Administrators Responsibilities

The Deputy Executive Director of The Arc of Hunterdon County is responsible for supporting the Compliance Action Plan which is under the direct supervision of the Associate Director of IT Systems/Corporate Compliance; and, in coordination with the Compliance Officer and Compliance Committee, overseeing compliance activities at The Arc of Hunterdon County.

In addition to any other actions that may be necessary and appropriate to fulfill the purpose of this Compliance Action Plan, the Administrators shall:

1. Comply with the Compliance Action Plan: General Standards of Conduct Policy.
2. Develop an appropriate job description for a Compliance Officer.
3. Serve as a member of the Compliance Committee.
4. Supervise the Compliance Officer and, in cooperation with the Compliance Officer and Compliance Committee, oversee all compliance activities.
5. Identify and delegate appropriate responsibilities to such other The Arc of Hunterdon County personnel as necessary to implement and maintain an effective Compliance Action Plan.
6. Receive and, where appropriate, act on reports from the Compliance Officer and/or Compliance Committee.
7. Support departmental corrective actions as recommended by the Compliance Officer and/or Compliance Committee.
8. In the event of a potential violation of any state or federal law or regulation, ensure appropriate steps are taken to respond to the alleged violation, including, but not limited to, consulting with counsel on behalf of The Arc of Hunterdon County where appropriate.
9. Participate in annual training concerning issues relevant to the Compliance Action Plan as set forth in the Compliance Action Plan: Education and Training Policy.
10. Maintain the confidentiality of any compliance issues brought before the Administrators consistent with applicable The Arc of Hunterdon County policies, laws, and regulations.
11. Compliance Office will have quarterly reports for the Deputy Executive Director to present to the Board of Directors.

Name (print): \_\_\_\_\_ Position: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## Compliance Action Plan: Compliance Officer Responsibilities

The Arc of Hunterdon County shall maintain a staffed Compliance Officer. The Compliance Officer shall report directly to the Compliance Administrators and, as appropriate, the Board of Directors. With the assistance of the Compliance Committee, the Compliance Officer shall be responsible for implementing, monitoring, and coordinating such action as is necessary and appropriate to facilitate an effective Compliance Action Plan.

1. The Compliance Officer shall be approved by both the Board of Directors as well as the Compliance Administrators prior to being offered employment with The Arc of Hunterdon County.
2. In addition to any other actions that may be necessary to fulfill the purpose of this Compliance Action Plan, the Compliance Officer shall:
  - a. Comply and enforce The Arc of Hunterdon County's Compliance Action Plan:
  - b. Oversee, monitor, and coordinate the implementation and maintenance of an effective Compliance Action Plan.
  - c. Serve as the Chairperson of the Compliance Committee.
  - d. Report directly to executive leadership and the Compliance Committee concerning compliance activities.
  - e. Report directly to the Board of Directors concerning compliance activities on a quarterly basis, or more frequently as deemed necessary by the Governing Board, Administrators, or Compliance Officer. The Compliance Officer shall have authority and the responsibility to report directly to the Board of Directors if he/she believes the Administrators are not adequately addressing compliance concerns. Among other things, the reports should summarize the results of compliance investigations, reviews or audits.
  - f. Annually review and update as needed the Compliance Action Plan as a necessary means to meet the needs of The Arc of Hunterdon County and comply with relevant laws, regulations, and third-party payor program requirements.
  - g. In cooperation and coordination with Human Resources, develop and direct programs that educate and train The Arc of Hunterdon County personnel concerning the Compliance Action Plan and the requirements of relevant laws, regulations, and program requirements as set forth in the Compliance Action Plan: Education and Training Policy.
  - h. Ensure that contracts, financial arrangements, or other transactions that may implicate fraud and abuse laws and regulations are reviewed for compliance.
  - i. Take reasonable steps to ensure that independent contractors and agents who furnish health care services or related services to The Arc of Hunterdon County are aware and/or act consistently with applicable laws, regulations, and The Arc of Hunterdon County policies, including the Compliance Plan. In the event that the Compliance Officer becomes aware of a violation of applicable laws, regulations or policies by independent contractors or agents, the Compliance Officer shall take appropriate steps to address the situation, including, where appropriate, modifying or terminating the relationship. Nothing in this policy or Compliance Action Plan shall be construed as an undertaking by The Arc of Hunterdon County to inspect, assume liability for or guarantee the performance of work or activities by independent contractors or their agents.
  - j. Coordinate with Human Resources or other appropriate personnel of The Arc of Hunterdon County to ensure that The Arc of Hunterdon County does not employ, contract with, grant privileges to, or bill for services rendered by entities excluded from government health programs. The National Practitioner Data Bank and Cumulative Sanction Report must be queried:
    - i. Before offering employment, granting or renewing privileges, or contracting or

- renewing a contract with any person or entity providing health care services.
- ii. At least biannually thereafter for each entity.
- k. Coordinate with Human Resources or other appropriate The Arc of Hunterdon County personnel to ensure that appropriate background checks are performed on a monthly basis so that The Arc of Hunterdon County does not employ persons who have been recently convicted of a felony or a criminal offense related to health care or health care fraud and abuse.
  - i. Central registry check.
  - ii. Driver's license check.
  - iii. National Criminal History check.
  - iv. Fingerprint check.
  - v. Child Abuse Registry check (CARI) (within ten days of being hired).
  - vi. Drug testing.
  - vii. State of New Jersey debarment list (mandatory)
    - 1. [www.nj.gov/comptroller/divisions/medicaid/disqualified/](http://www.nj.gov/comptroller/divisions/medicaid/disqualified/)
  - viii. Federal exclusions database (mandatory)
    - 1. <https://exclusions.oig.hhs.gov/>
  - ix. N.J. Treasurer's exclusions database (mandatory)
    - 1. [www.state.nj.us/treasury/revenu/debarment/debarsearch.shtml](http://www.state.nj.us/treasury/revenu/debarment/debarsearch.shtml)
  - x. N.J. Division of Consumer Affairs licensure databases (mandatory)
    - 1. [www.njconsumeraffairs.gov/Pages/verification.aspx](http://www.njconsumeraffairs.gov/Pages/verification.aspx)
  - xi. N.J. Department of Health licensure database (mandatory)
    - 1. [www.state.nj.us/health/guide/find-select-provider/](http://www.state.nj.us/health/guide/find-select-provider/)
  - xii. Certified nurse aide and personal care assistant registry (mandatory, if applicable):
    - 1. <http://njna.psiexams.com/search.jsp>
  - xiii. Federal exclusions and licensure database (optional and fee-based):
    - 1. <https://www.npdb.hrsa.gov/hcorg/pds.jsp>
 \*vii-xiii are done via a third party vendor.
- l. Work with Human Resources to ensure that all new hires are properly screened prior to their offer of employment with The Arc of Hunterdon County, ensuring that any and all potential red flags—including negative driving reports, criminal activity, ETC—are reviewed thoroughly and addressed as needed.
- m. Work with Directors and the Compliance Committee to establish appropriate internal compliance reviews and evaluation procedures for relevant departments. Among other things, the reviews may, but are not necessarily required to, address items such as:
  - i. Statistical samples that disclose variations from established baselines.
  - ii. Reserves established to repay government programs.
  - iii. Enforce the Compliance Action Plan to ensure that its elements have been implemented and are being followed to the fullest.
  - iv. Certain practices that have been identified by federal enforcement agencies as "risk areas" for waste, fraud and abuse, including:
    - 1. Compliance with laws governing kick-back arrangements and physical self-referrals.
    - 2. Compliance problems that may develop in the claim development and submission process, including, but not limited to, the improper billing practices referenced in the Compliance Action Plan: General Standards of

Conduct Policy and confirmation of the determination of medical necessity and reasonable necessary services.

3. Documentation that satisfies third-party payor requirements.

Such compliance risk areas are identified in the OIG Compliance Action Plan for Individual and Small Group Practices (2000), 65 F.R. 59434, and on the OIG's Fraud Detection and Prevention Website, <http://oig.hhs.gov/fraud.asp>

- n. Develop policies and procedures that encourage and allow The Arc of Hunterdon County personnel to report suspected compliance violations and other improprieties without fear of retaliation. Where possible, provide a method for anonymous reporting.
  - o. Take appropriate action on matters that raise compliance concerns, including, but not limited to, reports or complaints of suspected violations. The Compliance Officer shall have flexibility to design and coordinate internal investigations in conjunction with QA and any resulting corrective action with relevant The Arc of Hunterdon County departments, providers, agent, and, if appropriate, independent contractors.
  - p. Promptly report any apparent intentional violation of any state or federal regulation by any staff or employee to the Administrator. The Administrator may notify legal counsel and, if appropriate, coordinate any appropriate disclosure to the appropriate government agency.
  - q. In coordination with Human Resources or the appropriate manager and upon the approval of the Administrator, promptly initiate appropriate disciplinary or corrective action against any The Arc of Hunterdon County personnel for violations of the Compliance Action Plan as the circumstances warrant. The Compliance Officer shall review applicable bylaws, policies, procedures and contracts to ensure that the action taken is consistent with applicable standards and processes, if any.
  - r. If any systematic errors have resulted that would violate the Compliance Action Plan or applicable laws and regulations, recommend appropriate corrective action to the Administrator.
  - s. Establish and maintain a record of every complaint received involving a potential violation of any law or regulation related to health care fraud and abuse, which record shall include the following information:
    - i. The date received
    - ii. The manner in which the report was received (e.g., by anonymous report);
    - iii. A brief statement of the facts alleged;
    - iv. Notes detailing and documenting a timely investigation and response; and
    - v. A summary of the action taken and the date the action was taken.
  - t. Maintain records of substantive contact with any government agency relevant to the Compliance Action Plan, including, but not limited to, decisions, guidance, or advisory opinions concerning The Arc of Hunterdon County's compliance. If the government agency refuses to provide such guidance, the fact shall be documented.
  - u. Maintain the confidentiality of any compliance issues brought before the Compliance Officer consistent with applicable The Arc of Hunterdon County policies, laws, and regulations.
3. Except as prohibited by applicable laws or regulations, the Compliance Officer shall have authority to review all documents and other information relevant to compliance activities, including, but not limited

to, consumer records; billing records; marketing records; and agreements with other parties such as employees, staff professionals, independent contractors, suppliers, agents, The Arc of Hunterdon County-based physicians, etc.

4. Government regulators recognize that assertions of fraud and abuse raise numerous complex legal and management issues that should be examined on a case-by-case basis and, therefore, the Compliance Officer should work closely with legal counsel, who can provide guidance regarding such issues.

Name (print): \_\_\_\_\_ Position: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_



## Compliance Action Plan: Compliance Committee Responsibilities

The Arc of Hunterdon County shall utilize a Compliance Committee. The Compliance Committee shall be responsible for assisting and advising the Compliance Officer in implementing, monitoring, and coordinating such action as is necessary and appropriate to facilitate an effective Compliance Action Plan.

1. The members of the Compliance Committee shall be appointed by the Compliance Officer. The Compliance Committee shall consist of:
  - a. The Compliance Officer, who shall serve as Chairperson of the Compliance Committee.
  - b. A representative from the Compliance Administrators
  - c. The Chief Financial Officer or a representative sent in place of the Chief Financial Officer as appointed by the Chief Financial Officer
  - d. Representatives from appropriate departments from The Arc of Hunterdon County including but not limited to:
    - i. Executive Director
    - ii. Deputy Executive Director
    - iii. Director of Quality Assurance or an appointed representative
    - iv. Director of Human Resources or an appointed representative
    - v. Associate Executive Director and Director of Residential Services
    - vi. Director of Finance or an appointed representative
    - vii. Director of Day Program and Individualized Day Services
    - viii. Director of Medicaid Services
    - ix. Director of Family Support
  - e. Other representatives from The Arc of Hunterdon County personnel as appropriate and appointed by the Compliance Officer, Compliance Administrators, or Board of Directors.
  - f. Legal Counsel, as appropriate and determined by the Administrators.
2. In addition to any other actions that may be necessary or appropriate to fulfill the purpose of this Compliance Action Plan, the Compliance Committee shall do the following:
  - i. Comply with the COMPLIANCE Action Plan: General Standards of Conduct Policy.
  - ii. Meet Monthly or more frequently as deemed necessary by the Board of Directors, Administrators, or Compliance Officer.
  - iii. Advise and assist the Compliance Officer in implementing and monitoring the Compliance Action Plan throughout The Arc of Hunterdon County.
  - iv. Assist the Compliance Officer and department directors in identifying, analyzing, and prioritizing specific areas of concern in relevant departments.
  - v. Assist the Compliance Officer and department directors in developing, implementing, monitoring, and evaluating standards, policies, and procedures to ensure compliance specific departments.
  - vi. Assist the Compliance Officer in developing procedures to promote the detection of compliance problems through, e.g., employee reports; employee complaints; employee hotlines; etc.
  - vii. Assist the Compliance Officer in developing procedures to evaluate and respond to complaints and problems dealing with compliance issues.

- viii. Review, track, monitor, and follow up with all compliance violations for the month throughout The Arc of Hunterdon County to ensure that compliance was maintained. The committee will implement new policies and procedures to ensure that staff are able to effectively remain in compliance with both state as well as institutional policies.
- ix. Participate in annual training concerning issues relevant to the Compliance Action Plan as set forth in the Compliance Action Plan: Education and Training Policy.
- x. Maintain the confidentiality of any compliance issues brought before the committee consistent with applicable The Arc of Hunterdon County policies, laws, and regulations.

Name (print): \_\_\_\_\_ Position: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## Compliance Action Plan: Education and Training

The Arc of Hunterdon County will provide relevant training to The Arc of Hunterdon County personnel concerning compliance issues, including but not limited to applicable laws, regulations, third-party payor program requirements, and The Arc of Hunterdon County policies.

1. All new personnel of The Arc of Hunterdon County, including employees, contracted personnel and Board of Directors members, as part of an initial orientation, will receive training appropriate to the person's position and responsibilities concerning the Compliance Action Plan. The training will include:
  - a. The Arc of Hunterdon County's commitment to compliance and high standards of ethical, professional, and business conduct.
  - b. An overview of the Compliance Action Plan.
  - c. Reviewing and signing of the COMPLIANCE Action Plan: General Standards of Conduct Policy.
  - d. Instructions on how to receive answers to questions concerning the Compliance Action Plan or compliance issues.
  - e. Instructions on how to report suspected violations of laws, regulations, third-party payor program requirements and The Arc of Hunterdon County policies, and an explanation that persons will not be subjected to retaliation for making such reports.
  - f. Potential sanctions for violation of the Compliance Action Plan, including the failure to report suspected violations.
  - g. An opportunity to ask questions and receive answers.
2. The Arc of Hunterdon County personnel will receive annual training, or updated training as needed, concerning the Compliance Action Plan. All Trainings will be appropriate to the person's position and pertain to their direct responsibilities. Such trainings will be deemed as mandatory trainings, if an individual is not able to attend the formal training that is set into place, it will be their responsibility to inform the Compliance Officer and schedule an individual training as soon as possible.
  - a. Training will include:
    - i. The General Standards of Conduct.
    - ii. Changes in relevant laws, regulations, or third-party payor program requirements.
    - iii. Changes in relevant portions of the Compliance Action Plan or relevant policies or procedures.
    - iv. As appropriate and to the extent that disclosure would not jeopardize an applicable privilege, a discussion of compliance issues or problems discovered by The Arc of Hunterdon County since the last training relevant to the employee's position and responsibilities.
    - v. An opportunity to ask questions and receive answers.
  - b. The compliance Committee shall determine the need as well as frequency for additional trainings pertaining to the Compliance Action Plan as well as any compliance related topic. These trainings will fall outside of the mandatory annual training and will not serve as an adequate means of fulfilling the annual training requirement as detailed in the Compliance Action Plan: Education and Training. Trainings can be implemented either to a department or an individually based on changes in regulations, employee misconduct, or as a general refresher.

- c. Persons who have received compliance education or training will sign a form verifying that they have received training. In addition, as part of formal compliance programs, employees will be asked to confirm that they have disclosed all suspected violations, if any, of laws, regulations, program requirements, and The Arc of Hunterdon County policies pursuant to their obligations under the Compliance Action Plan: Communication About Compliance Issues Policy.
- 3. The Arc of Hunterdon County Directors, employees, or contractors whose actions affect the validity and accuracy of claims submitted to the federal or state government (including personnel involved in coding, billing, cost reporting, and marketing processes) shall receive additional specialized training appropriate for their position and responsibilities, including training concerning the following:
  - a. General prohibitions on paying or receiving remuneration to induce referrals.
  - b. Government and private payor reimbursement principles.
  - c. Other improper billing practices, including those referenced in the Compliance Action Plan: General Standards of Conduct Policy.
- 4. The Compliance Officer shall, with the assistance of the Compliance Committee and relevant department directors:
  - a. Stay current on laws, regulations, third-party payor program requirements, and advisories relevant to compliance issues, including “fraud alerts” issued by the Office of Inspector General.
  - b. Notify appropriate The Arc of Hunterdon County personnel of relevant changes in laws, regulations or program requirements that affect compliance. The Compliance Officer may request a report from the department leader as to whether the behavior detailed in the alert is likely to be of concern to The Arc of Hunterdon County.

## Compliance Action Plan: Billing Responsibilities

The Arc of Hunterdon County will ensure that all claims submitted for payment are accurate and correctly identify the services ordered. The Arc of Hunterdon County will not:

- a. Bill for services not provided.
- b. Bill for services not properly authorized.
- c. Misrepresent a consumer's diagnosis to justify services.
- d. Knowingly apply for duplicate payment or payment from duplicate payors for the same service.
- e. Unbundle charges.
- f. Misrepresent the services rendered, the amounts charged, the identity of the person receiving the service, or the identity of the person actually providing the service.
- g. Utilize the billing number for a provider who did not actually provide the service.
- h. Bill as if services rendered one day were rendered on different days: or
- i. Take other action that is false or in violation of applicable laws or regulations.

:

1. Arc of Hunterdon County staff and the billing department are responsible for ensuring the appropriateness of codes for any tests ordered.
2. Questions about code selection should initially be presented to the supervisor; the Support Coordinator will be contacted if necessary.
3. If questions remain after discussing with the Support Coordinator, the department should refer the matter to the Compliance Officer.
4. Billing Office personnel must be particularly vigilant in billing for services that involve:
  - a. Coding.
  - b. Claim rejections, in which case notify supervisor for problem identification and correction.
  - c. Inappropriate unbundling/bundling of services.
5. Billing codes will be reviewed annually upon receipt of the code manual for the year. Significant code changes will be communicated in writing to practitioners as appropriate.
6. Bulletins from third-party payors will be reviewed and initialed by head of the Billing Office. Coding changes made or changes in reimbursement levels will be communicated to all Support Coordinators as needed.
7. Coding change instructions and transmittals will be retained for a period of Seven (7) years from the date they are effective.
8. The Arc of Hunterdon County will not:
  - a. Use diagnostic information provided from earlier dates of service.
  - b. Use prepared forms that provide diagnostic information which has been found to be successful in maximizing reimbursement in the past.
  - c. Use any computer-based or other programs which automatically insert diagnosis codes without receipt of current diagnostic information from the practitioner; or,
  - d. Assume or "make up" diagnostic information for claims submission purposes.
9. The Arc of Hunterdon County will not bill Medicare beneficiaries for uncovered services unless a beneficiary acknowledgement executed by the consumer prior to the performance of the service is on file.

## Compliance Action Plan: Auditing and Monitoring

The Arc of Hunterdon County will implement a self-assessment program to monitor and evaluate the compliance program. Evidence of ongoing monitoring will be maintained by the Compliance Officer and periodic reports will be given to the Administrator and Board of Directors.

1. *Department Responsibilities.* The Compliance Officer and Compliance Committee shall ensure that each The Arc of Hunterdon County department with responsibilities that implicate compliance issues establishes an appropriate policy and process for monitoring ongoing compliance. The policy and processes may vary according to the department's needs and compliance risks.
2. *Methods.* The Compliance Officer and Compliance Committee shall work with the department to identify the appropriate monitoring and auditing process, which may include the following as appropriate to the department:
  - a. Periodic review of departmental practices or actions relevant to compliance issues, including but not limited to-
    - i. Claims for payment generated or submitted by the department.
    - ii. Contracts with potential referral sources relevant to the department.
    - iii. Necessity, quality, and propriety of care rendered.
  - b. Receipt of and response to compliance questions, concerns, or complaints.
  - c. Review of government survey or inspection results.
  - d. Review of new government guidance or directions.
  - e. Review of claim denials.
  - f. The Compliance Officer shall interview employees concerning possible or potential compliance issues, including exit interviews of employees who leave The Arc of Hunterdon County employment.
  - g. Discussion of compliance issues in regularly scheduled Compliance Committee meetings.
  - h. Confirmation that department employees have been properly trained concerning compliance issues relevant to their job duties.
  - i. Review of significant deviations in process or payments.
  - j. As authorized by the Compliance Officer, formal auditing by an internal or external professional of compliance-related issues.
3. *Frequency.* The frequency and extent of the monitoring shall depend on the needs and potential for compliance violations in the department, provided that the following shall apply to specific departments.
  - a. *Billing and coding.* (Monthly basis) Departments that are involved in coding and billing for claims will review a sample of bills and underlying documentation to confirm ongoing compliance with applicable laws, standards, and payor requirements governing billing, coding, and claim submission.
  - b. *Clinical services.* Departments that render and document clinical services will, on a quarterly basis, review a sample of charts and related documents to confirm ongoing compliance with applicable laws and standards concerning consumer care services, medical necessity, appropriate documentation, and proper coding of services rendered.
4. *Reports.* At least once each year, each department with responsibilities that implicate potential compliance concerns shall prepare and submit an appropriate confidential report to the

Compliance Officer summarizing the department's monitoring activities during the preceding year. The report shall include:

- a. A brief description of the department's ongoing monitoring activities and the results of such monitoring.
  - b. A brief description of any compliance issues or concerns that were identified, and the resolution of those concerns. This is to be done on a quarterly basis, with quarterly reports sent to the Compliance Officer.
  - c. A brief description of training provided concerning compliance issues or concerns.
  - d. Any other items relevant to the Compliance Officer's duties.
5. *External Audits.* The Compliance Officer, with Administrator approval, may at any time, direct that an external audit of any department be conducted by qualified The Arc of Hunterdon County personnel or an outside contractor. An external audit may be appropriate where, e.g., internal reviews or complaints raise the possibility of a significant compliance issue; new guidance has been received from regulators; it is necessary to establish a baseline to confirm compliance or provide training; or simply to confirm ongoing compliance in departments which face significant compliance issues. If an audit is employed, it may follow this protocol:
- a. The Compliance Officer, with the assistance of the Compliance Committee, determines the need for and scope of the audit.
  - b. The Compliance Officer, with the assistance of the Compliance Committee, will develop a checklist of pertinent information including but not limited to data logs as well as financial documentation to be audited.
  - c. The Compliance Officer or Compliance Committee may meet with an Administrator to discuss the need for and scope of the audit.
  - d. The chosen auditor is assigned tasks by the Compliance Officer or member of the Compliance Committee.
  - e. The auditor meets with the department leader to conduct the audit with the assistance of the department leader.
  - f. The auditor may elect to share preliminary findings with the Compliance Officer, assigned representatives of the Compliance Committee, and/or department leader.
  - g. The auditor prepares and presents to the Compliance Officer a report with appropriate examples of substantiating material.
  - h. The Compliance Officer and auditor meet with department directors to review and discuss the report. The department leader may be given an opportunity to respond to the report.
  - i. The Compliance Officer will present the report and relevant information to the Administrator and, as appropriate, the Compliance Committee and Governing Board.
6. *Violations of law.* In cases where department monitoring, reviews or audits reveal evidence of an actual violation of civil or criminal law or the rules and regulations of government health care programs (e.g., Medicare or Medicaid), the department leader shall immediately notify the Compliance Officer. If the Compliance Officer determines that the concern is valid, the Compliance Officer will immediately notify the Administrator, who may consult with legal counsel and, as appropriate, notify the relevant government authority. The Board of Directors will be apprised of findings and actions taken.
7. *Over/under payments.* In cases where department monitoring, reviews, or audits reveal evidence of the receipt of overpayments or underpayments from any third-party payor, the department leader shall notify the Compliance Officer. The Compliance Officer or his or her designated billing staff may consult with legal counsel and, if determined appropriate, immediately notify the third-party payor and refund any overpayment or seek payment for any underpayment. An administrator will be informed of significant underpayments or overpayments.

## Compliance Action Plan: Investigation and Response

The Compliance Officer or their designee will direct investigators concerning alleged compliance problems and report relevant findings. The fact that a complaint was filed does not necessarily establish wrongdoing but does serve as an opportunity to evaluate the compliance program and make any appropriate changes.

1. *Record.* Upon receiving notice of a potential compliance problem, the Compliance Officer shall create a record as referenced in the Compliance Action Plan: Compliance Officer Responsibilities Policy. The record shall contain the following information:
  - a. The date received.
  - b. The manner in which the report was received (e.g., by anonymous report).
  - c. A brief statement of the facts alleged.
  - d. Notes detailing and documenting a timely investigation and response; and
  - e. Action taken and the date the action was taken.
2. *Investigation.* The Compliance Officer, or an appropriate designee, shall promptly investigate the issue. Among other appropriate actions, the Compliance Officer or their designee may, as circumstances warrant:
  - a. Review documents and statistical data to determine whether there are systematic or clerical errors by, e.g., checking for analytical or transcription errors or statistical outliers.
  - b. Review relevant policies and procedures relating to the compliance problem to determine the extent of the problem.
  - c. Review documentation and witnesses to determine if there was intentional wrongdoing as evidenced by intentionally erroneous policies; altered records; etc.
3. *Report.* Upon completion of the investigation, the Compliance Officer or their designee will prepare a final report summarizing the investigation and recommend action to be taken, if any. Information will be presented to an administrator for additional action, which may include termination. Additional actions may include, but are not necessarily limited to, providing additional training; modifying or correcting procedures; disciplining employees; repaying overpayments or requesting payment for underpayments; etc.
4. *Errors resulting in noncompliance.* If the investigation discloses unintentional errors or mistakes by The Arc of Hunterdon County personnel, the Compliance Officer shall report the conclusions to the Administrator and, as appropriate, the Compliance Committee and/or Governing Board. Legal counsel may be contacted to determine whether disclosure or repayment to the appropriate government entity should be made. According to the OIG Self-Disclosure Protocol, matters involving exclusively overpayment or errors that do not suggest that violations of law have occurred should be brought to the attention of the government contractor and need not to be reported to government agencies.
5. *Violations of law.* If the investigation discloses what appear to be intentional violations of applicable civil or criminal laws, the Compliance Officer shall immediately report the facts to the Administrator. Legal counsel may be contacted to determine whether disclosure or repayment to the appropriate government should be made. If possible, disclosure should be made within 60 days from the time that the errors were discovered.

*Repayments.* Federal and state laws generally require that The Arc of Hunterdon County report and repay overpayments received from government health care programs within, e.g., 60 days. Compliance Officer shall work with appropriate departments and, as appropriate, legal counsel to comply with all such laws.