



**SUNNY DAYS EARLY CHILDHOOD
DEVELOPMENTAL SERVICES, INC.**

“Making the Future Brighter, One Child at a Time”

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Fraud, Waste and Abuse Policy/Procedure
(In compliance with NJEIS-15 and section 6032 of Medicaid)

Purpose:

To identify, remediate and avoid circumstances under which fraud, waste, and abuse occur within Sunny Days, Inc. during the course of service provision to NJEIS families and NJEIS entities.

Persons Affected:

CEOs, Program Director, Director of Finance, Controller, Human Resources Director, Regional Administrators, Direct Service Staff, Independent Contractors, Finance Department staff.

Effective Date: 4/1/2008

Revised Date: 2/22/2011

Revised Date: 2/12/2021

Policy:

- Consistent with federal, State law and the NJEIS, Sunny Days strictly prohibits all acts that constitute fraud, waste, and abuse.
- Sunny Days shall ensure that it has claims, submission policies and procedures that include provisions consistent with policies applicable to each State in which business is conducted (Fraud, Waste, and Abuse).
- All employees and independent consultant staff working through Sunny Days shall be required to attend initial training on prevention of fraud, waste and abuse to ensure compliance with NJEIS-15 and agency policies.
- As used in this policy, the following words and terms are defined as indicated:
 - **“Abuse”** means activities by any party, including a recipient of EIS services, that are inconsistent with sound fiscal, business or educational practices, which result in unnecessary costs to the EIS/private entities, or in reimbursement of services that are not necessary or that fail to meet professionally recognized standards for developmental/education services;
 - **“Claim”** means a request for payment related to EIS/private services;
 - **“Fraud”** means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person;
 - **“Knowing”** and **“knowingly”** mean that a person, with respect to information--
 - has actual knowledge of the information;
 - acts in deliberate ignorance of the truth or falsity of the information;
 - acts in reckless disregard of the truth or falsity of the information; or it is practically certain from the conduct of the person that a certain result will occur;
 - **“Participant”** means: (1) a child and/or family receiving or attempting to access EIS or private services; (2) a practitioner providing EIS or private services, on behalf of a provider agency, to a child and/or family; (3) an agency operating under a Letter of Agreement to ensure the provision of EIS or private services to children

and families on behalf of the EIS, including service coordination; and (4) employees and managers working for the Lead Agency and Early Intervention System; and

- **“Waste”** means activities involving payment or the attempt to obtain reimbursement for items or services where there was no intent to deceive or misrepresent but the outcome of poor or inefficient claiming or inappropriate IFSP development causes unnecessary costs to EIS or Sunny Days or families.
- **“Waste”** includes any action or inaction that does not rise to the level of fraud or abuse, but results in overpayments or misspent funds.

- Provider agencies, practitioners, and as indicated, families must comply with the: Federal False Claims Act; Federal Anti-Kickback statute; Deficit Reduction Act of 2005; New Jersey Medical Assistance and Health Services Act; Health Care Claims Fraud Act; Uniform Enforcement Act; New Jersey Consumer Fraud Act, and Conscientious Employee Protection Act, in the delivery of NJEIS services.

- The Federal False Claims Act (FCA), codified at 31 U.S.C. §§ 3729-3733, is one of the federal government’s primary weapons to fight fraud against the government. The Act provides for penalties of between \$10,957 and \$21,916 per false claim, and triple damages for anyone who knowingly submits or causes the submission of false or fraudulent claims to the United States for government funds or property.
 - a. Refer to Federal Register Volume 82, Number 22 (pages 9131-9136) for specifics.
 - b. The amount of the false claim penalty is to be adjusted periodically for inflation in accordance with a federal formula.
 - c. The Act prohibits, among other things, the submission of inappropriate claims for NJEIS services, since the NJEIS is funded, in part, by federal funds.
 - d. It also protects “whistleblowers” by providing that any employee who is subject to retaliation or discrimination by an employer in the terms and conditions of employment because the employee lawfully sought to take action or assist in taking action under this act “shall be entitled to all relief necessary to make the employee whole.” This includes reinstatement with seniority restored to what it would have been without the retaliation or discrimination, double the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the employer’s actions, including litigation costs and reasonable attorney’s fees.

- The Federal Program Fraud Civil Remedies Act (PFCRA), codified at 31 U.S.C. §§ 3801-3812, provides federal administrative remedies for false claims and statements, including those made to federally funded health care programs.
 - a. Current civil penalties are \$10,957.00 for each false claim or statement, and an assessment in lieu of damages sustained by the federal government of up to double damages for each false claim for which the government makes a payment.
 - b. The amount of the false claim penalty is to be adjusted periodically for inflation in accordance with a federal formula.

- Under Federal Anti-Kickback statute (AKA), codified at 42 U.S.C. § 1320a-7b, it is illegal to knowingly and willfully solicit or receive anything of value directly or indirectly, overtly or covertly, in cash or in kind, in return for referring an individual or...ordering or arranging for any good or service for which payment may be made in whole or in part under a federal health care program, including programs for children and families accessing EIS services through NJ Medicaid, Family Care and Kid Care.
- Under Section 6032 of the Deficit Reduction Act of 2005 (DRA), codified at 42 U.S.C. § 1396h, participants in the EIS shall follow Federal and State laws pertaining to civil or criminal penalties for false claims and statements, and whistleblower protections under such laws, with respect to the role of such laws in preventing and detecting fraud, waste, and abuse in Federal health care programs, including programs for children and families accessing EIS services through NJ Medicaid and NJ Family Care.
- The New Jersey False Claims Act (NJFCA), P.L. 2007, Chapter 265, codified at N.J.S.A. 2A:32C-1 through 2A:32C-17, and amending N.J.S.A. 30:4D-17(e), which was enacted on January 13, 2008 and was effective 60 days after enactment, has three parts:
 - a. The main part authorizes the New Jersey Attorney General and whistleblowers to initiate false claims litigation similar to what is authorized under the Federal False Claims Act and has similar whistleblower protections.
 - b. Another part amends the New Jersey Medicaid statute to make violations of the New Jersey False Claims Act give rise to liability under N.J.S.A. 30:4D-17(e); and
 - c. A third part amends the New Jersey Medicaid statute to increase the \$2000 per false claim civil penalties under N.J.S.A. 30:4D-17(e) (3) to the same level provided for under the Federal False Claims Act, which is currently between \$10,957 and \$21,916 per false claim.
- Under the criminal provisions of the New Jersey Medical Assistance and Health Services Act (MAHSAM), codified at N.J.S.A. § 30:4D-17(a) – (d), participants in the EIS shall refrain from engaging in fraud or other criminal violations relating to Title XIX (Medicaid)-funded programs.
- Prohibited conduct includes, but is not limited to: (a) fraudulent receipt of payments or benefits; (b) false claims, statements or omissions, or conversion of benefits or payments; (c) kickbacks, rebates and bribes; and (d) false statements or representations about conditions or operations of an institution or facility to qualify for payments. Participants engaging in criminal violations may be excluded from participation in Medicaid and other health care programs under N.J.S.A. §30:4D-17.1(a).
- Under the civil provisions of the MAHSA, codified at N.J.S.A. §§ 30:4D-7(h) and 30:4D17(e) – (i),
Participants in the NJEIS:
 - A. shall repay with interest any amounts received as a result of unintentional violations; and
 - B. are liable to pay up to triple damages and (as a result of the New Jersey False Claims Act) between \$10,957 and \$21,916 per false claim when violations of the Medicaid statute are intentional, or when there is a violation of the New Jersey False Claims Act.
 - C. Participants engaging in civil violations may be excluded from participation in Medicaid and other health care programs under N.J.S.A. § 30:4D-17.1(a).

- Under the Health Care Claims Fraud Act (HCCFA), codified at N.J.S.A. §§ 2C:21-4.2, 2C:21-4.3 and 2C:51-5, participants in the EIS shall not: (1) knowingly commit health care claims fraud in the course of providing EIS services; (2) recklessly commit health care claims fraud in the course of providing EIS services; and (3) commit acts of health care claims fraud as described in (1) and (2), if the commission of such acts would be performed by an individual other than the professional who provided EIS services (e.g., claims processing staff).
- Under the Uniform Enforcement Act (UEA), codified at N.J.S.A. § 45:1-21(b) and (o), licensed professionals are prohibited from engaging in conduct that amounts to, “dishonesty, fraud, deception, misrepresentation, false promise or false pretense” or involves false or fraudulent advertising.
- Under the New Jersey Consumer Fraud Act (CFA), codified at N.J.S.A. §§ 56:8-2, 56:8-3.1, 56:8-13, 56:8-14, and 56:8-15, provider agencies and the individuals working for them shall be prohibited from the unlawful use of “any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression, or omission of any material fact”, with the intent that others rely upon it, in connection with the sale, rental or distribution of any product or service by the provider agency or its employees, or with the subsequent performance of that provider agency or its employees.
- Under the Conscientious Employee Protection Act (CEPA), codified at N.J.S.A. §34:19-1, et seq., Sunny Days is prohibited from taking retaliatory action against employees who: (a)disclose or threaten to disclose to a supervisor or any public agency an activity, policy or practice of the provider agency or another business with which the provider agency shares a business relationship, that the employee reasonably believes to be illegal, fraudulent and/or criminal; (b)provides information or testimony to any public agency conducting an investigation, hearing or inquiry into any violation of law, rule or regulation by the provider agency or another business with which the provider agency shares a business relationship; or (c) objects to, or refuses to participate in any activity, policy or practice which the employee reasonably believes is illegal, fraudulent, criminal or incompatible with a clear mandate of public policy concerning the public health, safety or welfare, or protection of the environment.
- Sunny Days, Inc. shall not submit a claim that, if processed and reimbursed, would constitute fraud, waste or abuse, consistent with the FCA, AKA, DRA, MAHSAM, HCCFA.
- No family receiving services from Sunny Days shall seek payment of EIS/private services, if payment for said services would constitute fraud, waste or abuse, consistent with the FCA, AKA, DRA, MAHSAM, HCCFA.
- Cases believed to involve fraud; waste or abuse shall be investigated by the Program Director, Finance and Human Resource Directors within Sunny Days and the results of such investigation reported to the lead agency. Regional Administrative Staff are responsible for assisting in any investigation as deemed necessary to obtain all applicable information to substantiate the allegations or suspicions.
- Cases brought to the attention of the state EIS may be independently investigated by EIS staff or the EIS’ designee, to determine the merits of alleged fraud waste or abuse.

- If a family or provider agency has been adjudged to have committed fraud, waste or abuse, the EIS shall impose sanctions, including, but not limited to: (1) recoupment of funds linked to fraud, waste or abuse, together with interest and any applicable civil penalties; (2) suspension of services to a child (whose parents committed fraud, waste or abuse); (3) disqualification of a practitioner from serving within the EIS; (4) termination of the Letter of Agreement between Sunny Days, Inc. and the EIS for the provision of early intervention services; and/or (5) referral of any evidence of suspected fraud or other criminal activity to the Medicaid Fraud Section, Office of Insurance Fraud Prosecutor, NJ Division of Criminal Justice or applicable state sanctions.

Procedure:

- All staff of Sunny Days must attend mandatory agency Orientation training that cover topics related to the prohibition of fraud, waste and abuse prior to taking active referrals. NJEIS-15 and the Sunny Days' FWA policy are posted on our agency website for easy reference to all practitioners, employees and families receiving services. The self-study online portion of the agency Orientation covers our policy on FWA and practitioners requirements for preventing and reporting cases of FWA including billing procedures, obtaining parent signatures at the end of each service session, determining on-going NJEIS eligibility in preparation for IFSP reviews, accurate Communication Logs for documentation of timely service provision, missed and no-show sessions, altering or falsifying records.
- Following their interview and thorough criminal background checks, all practitioners and prospective employees receive a hard copy of the agency policy on FWA and NJEIS-15 with their written contractual agreement and an acknowledgement slip which must be signed and returned with the contract.
- Regional Administrators accepting new IFSP services confirm finalized IFSPs in PCG with correct service and practitioner assignment prior to start of each service.
- Finance department staff shall conduct daily audits of all billing invoices for valid and accurate service authorizations, session notes, and Service Encounter Verification logs to detect discrepancies in dates of service, time of service and caregiver signatures to avoid fraud, waste and abuse.
- Any paperwork found to be incomplete and not passing audit for billing purposes shall be returned to the practitioner for correction before processing for billing and subsequent reimbursement or payment.
- Instances of suspected fraud, waste and abuse must be immediately reported to the practitioner's immediate Supervisor or Regional Administrator by any agency contractor or employee and will then be investigated according to policy procedure.
- Upon notification of alleged fraud, waste or abuse, the Sunny Days shall document the: (a) date; (b) parties involved; (c) sources and bases for the allegations; (d) steps that will be taken to investigate the allegations; (e) the names of individuals who will be interviewed regarding the allegations; (f) the projected timeline for investigation; (g) any findings related to the investigation; (h) agency remedial action taken as a result of findings; and (i) any disciplinary actions imposed upon employees or contractors as a result of finding.
- Within 2 business days following notification of allegations, Sunny Days shall notify the lead agency of alleged fraud, waste and abuse, detailing the basis of suspicions, the status of any investigation, and the anticipated timeline for determining whether fraud, waste or abuse occurred.
- Not more than 45 days following the date of receipt of notification of an alleged act of fraud, waste, or abuse, Sunny Days must conclude its investigation and submit to the EIS its findings.

- Actions taken by Sunny Days, based on allegations of fraud, waste or abuse shall be articulated in writing to the accused and copied to the EIS, and other relevant parties, strictly on a need-to-know basis.
- Should the EIS determine that it intends to investigate a case of alleged fraud, waste or abuse that is brought to its attention, the relevant parties, including practitioners, Sunny Days, Inc. and staff shall completely cooperate with the EIS in its investigation to ensure that the merits of any allegation are thoroughly and accurately explored.
- The EIS shall conclude its investigation into allegations of fraud, waste or abuse within 60 days of receipt of all documentation related to the allegations and shall issue a report to the accused and copy relevant excerpts to appropriate parties to address any sanctions imposed.
- Any sanctions imposed by the EIS consistent with the state specific policy shall be binding and shall be reviewable, on appeal, by the Grants Appeals Board or the Assistant Commissioner of Family Health Services.
- Any evidence of suspected fraud or other criminal activity will be referred to the Medicaid Fraud Section, Office of Insurance Fraud Prosecutor, NJ Division of Criminal Justice or applicable state Division of Criminal Justice.
- NJEIS staff and employees of providers agencies who wish to report evidence of fraud, waste, or abuse anonymously and confidentially can do so in the following manner:
 - A. Call the toll-free NJ Fraud and Abuse Hotline at 1-888-937-2835 and report any information about fraud, waste or abuse in Medicaid or NJ Family Care. Callers can either speak to the hotline operator or leave a message if the operator does not answer, or refer to the NJ Medicaid Fraud Division website at [New Jersey Office of the State Comptroller | File a Complaint \(nj.gov\)](#)
 - B. Contact the New Jersey Insurance Fraud Prosecutor Hotline at 877-55-Fraud or go online at [Insurance Fraud. Report It. End it. - State of New Jersey \(njinsurancefraud2.org\)](#) or refer to the NJ Medicaid Fraud Division website at [New Jersey Office of the State Comptroller | File a Complaint \(nj.gov\)](#)