

**UNION COUNTY EDUCATIONAL SERVICES COMMISSION**  
**45 Cardinal Drive**  
**Westfield, New Jersey 07090**

**MEMORANDUM OF UNDERSTANDING FOR THE HOME INSTRUCTION PROGRAM**

**THIS UNDERSTANDING made as of this 1<sup>st</sup> DAY OF JULY 2020 (the "Execution Date")**

**BETWEEN:**

**Children's Specialized Hospital of 150 New Providence Road Mountainside, NJ 07092 ("CSH")**

**AND:**

**Union County Educational Services Commission of 45 Cardinal Drive Westfield, NJ 07090 ("UCESC")**

For and in consideration of the terms and conditions herein, the parties hereto mutually agree as follows:

1. UCESC agrees to provide a program of instruction to Public School students, subsequent to a contract between UCESC and the student's local school district, who are receiving outpatient services at Children's Specialized Hospital Neurorehabilitation Program for up to 10 hours per week.
2. UCESC shall be responsible for supplying managerial services and educational programming for eligible students. UCESC shall be responsible for the following:
  - a. UCESC will be in compliance with all applicable Federal, State and Local laws and regulations, including but not limited to HIPAA
  - b. UCESC will ensure that all applicable teachers/employees maintain current licensure certification.
  - c. UCESC will ensure the following for each applicable teacher/employee:
    - i. Health screening clearance. Employees will comply with health requirements to include proof of satisfactory medical examination, TB testing, MMR immunization or related titers, varicella titer and Hepatitis B series or signed declination.
    - ii. Completed criminal background check
  - d. UCESC will conduct ongoing monitoring and evaluation of service outcomes and/or satisfaction with detailed services.
  - e. UCESC will provide documentation that supports the competence of all employees directly providing services for Children's Specialized Hospital upon request.
3. Home instruction shall be provided on a one-to one basis by certified teachers for no fewer than five hours per week for general instruction students or ten hours per week for special education students on no fewer than three separate days of the week in accordance with N.J.A.C. 6A:16-10.1
4. Said instruction shall be provided on site at CSH with CSH providing appropriate facilities and space to accommodate such instruction.
5. UCESC will not provide a nurse and will have no responsibility to provide nursing or medical services to students enrolled in the home instruction program.
6. UCESC has no responsibility for the transportation of students enrolled in the home instruction program either to or from CSH.

7. Change of Schedule -- In the event that CSH requests a change to the schedule of home instruction provided, CSH must make the request to change the schedule to the Local Public School District's Child Study Team. If the Commission can accommodate the schedule change it will send a new contract to the Child Study Team with the revised schedule and will notify CSH in writing the start date of the new schedule. If UCESC cannot accommodate the requested schedule change, the home instruction services will terminate.
8. In the event of an instructor absence, UCESC is not required to provide a substitute. UCESC will notify CSH in the event of an instructor's absence. In the case of a pupil absence the caregiver will be instructed to contact the principal overseeing the home instruction program directly.
9. UCESC and/or its staff and contracted instructors have no responsibility for supervising students in the home instruction program outside of the approved instructional schedule.
10. Referral process-Appropriate representatives for the Local Public School District will contact the UCESC directly to request home instructions and then send student records for review to UCESC. If the student is a candidate for the home instruction program, UCESC will coordinate with CSH to accept student based upon the availability of instructor, student schedule and physical space. UCESC will notify Local Public School District of acceptance decision based upon aforementioned factors.
11. The parties hereby acknowledge and agree that UCESC will seek payment from local school districts for the services provided. The UCESC shall be responsible for billing and collecting fees from the local school districts for the Services rendered.
12. UCESC will notify CSH of anticipated start date of instruction, student schedule and provide a signed copy of the agreement with the Local School District.
13. Both parties (CSH and UCESC) agree to maintain through the term of this agreement the following insurance:
  - a. Comprehensive general liability in an amount of \$1,000,000 per occurrence and \$3,000,000 annual aggregate.
  - b. Personal injury, property damage and professional liability insurance in the amount of \$1,000,000 per occurrence and \$3,000,000 annual aggregate.
14. UCESC shall indemnify and hold harmless CSH, its officers, trustees, agents and employees from and against any and all losses, claims, damages, liabilities, costs, injuries, expenses, including all reasonable attorneys' fees and other costs (except if such loss, claim, damage, liability, cost or expense arises out of the negligence or willful misconduct of CSH), which arise or relate either directly or indirectly from the acts or omissions of UCESC or its officers, trustees, agents and employees in the operation of the Program, the provision of Services or in performance of its obligations under this Agreement; provided, however, that such indemnification shall not exceed the amounts of the insurance UCESC is required to maintain pursuant to Section 4.2 of this Agreement. In the event that UCESC shall fail to maintain such insurance, UCESC shall indemnify CSH as provided herein up to such limits.
15. CSH shall indemnify and hold harmless UCESC from and against any and all losses, claims, damages, liabilities, injuries, costs and expenses, including all attorneys' fees and other costs (except if such loss, claim, damage, liability, cost or expense arises out of negligence or willful misconduct of UCESC), which arise or relate either directly or indirectly from the acts or omissions of CSH or its officers, trustees, agents, and employees in the operation of the Program, the provision of Services or in performance of its obligations under this Agreement.


16. UCESC shall perform all work in such a way as to avoid unreasonable interference with the operations of Hospital and shall ensure that its employees and independent contractors abide by all rules and regulations of Hospital while working on Hospital premises, including rules and regulations concerning security, ID badges, and patient confidentiality and privacy.
17. UCESC warrants that all services provided under the Agreement shall be performed in a workmanlike manner in accordance with applicable industry standards.
18. The amounts to be paid by the Hospital to UCESC hereunder have been determined by the Parties through good-faith and arms-length bargaining to be the fair market value of the services rendered to the Hospital hereunder. No amount to be paid hereunder is intended to be, nor shall it be construed to be, an inducement or payment for referral of patients by UCESC or any affiliate of UCESC to the Hospital. The Parties shall comply in all respects with all applicable requirements of the Medicare and Medicaid Fraud and Abuse "safe-harbor" regulations (the "Safe-Harbor Regulations") as they may exist from time to time and any amendments thereto, and shall comply with all applicable directives, orders or other lawful pronouncements of any lawful authority related to those Safe-Harbor Regulations. Each Party agrees to cooperate fully in any investigation regarding such matters and, to the extent reasonably feasible, to attempt to settle such investigation, and any formal charges associated therewith for monetary relief without resort to trial on the merits.
19. To the extent applicable, the Parties agree that they will fully and accurately account for, and report in any applicable cost reports, any discount received under this Agreement in a way that complies with all applicable laws, including the federal Social Security Act and implementing regulations relating to Medicare, Medicaid and other federal healthcare programs.
20. The laws of the State of New Jersey, without giving effect to its choice of law principles, govern all matters arising under or relating to the Agreement.
21. Notwithstanding anything to the contrary in the Agreement, Hospital's merger or consolidation with another health care system or entity shall not be considered an assignment requiring the consent of UCESC.
22. UCESC represents that it shall cooperate with and to the extent applicable abide by Appendix A regarding compliance with Section 6032 under the Deficit Reduction Act of 2005, including any Corporate Compliance Program now or hereafter instituted by Hospital and its affiliates and the Hospital's Code of Conduct. UCESC shall make it available to its employees and managers as necessary for its interaction with Hospital.
23. UCESC represents and warrants that it is not a Sanctioned Person or Entity. For purposes of this Agreement, the term "Sanctioned Person or Entity" means a person or entity who (a) has been excluded by the Office of the Inspector General of the Department of Health and Human Services from participation in Medicare, Medicaid or any state health care program (defined at 42 C.F.R. § 1001.2) pursuant to 42 C.F. R. Part 1001 or (b) has been excluded by the State of New Jersey Department of Human Services from participation in New Jersey's Medicaid program pursuant to 42 C.F.R. Par 1002. UCESC shall notify Hospital within ten (10) days after it receives notice that it is a Sanctioned Person or Entity. Hospital shall have the right to terminate this Agreement without penalty at any time after learning that UCESC is a Sanctioned Person or Entity.

24. In performing their duties under this Agreement, the Parties shall be acting as independent contractors. All persons employed by a Party shall be employees of that Party only and shall look only to their own employer for employment benefits and payment of wages. No relationship of employer/employee between the Parties is created by this Agreement. Each Party is solely responsible for paying all employment taxes relative to its own staff, and each Party shall indemnify and hold the other harmless with respect thereto. UCESC shall not have the authority to bind Hospital in any respect without the prior written consent of Hospital.
25. In the event that Section 952 of P.L. 96-499 [42 U.S.C. Section 1395x(v)(1)(I)] (the Omnibus Reconciliation Act of 1980, provisions relating to Medicare) is applicable to this Agreement, UCESC agrees as follows: until the expiration of four (4) years after the furnishing of any services pursuant to this Agreement, UCESC shall make available, upon written request by the Secretary of the federal Department of Health and Human Services or upon request by the Comptroller General of the United States, or any of their duly authorized representatives, this Agreement, and all books, documents and records of UCESC that are necessary to certify the nature and extent of the cost of services pursuant to this Agreement.
26. This memorandum of understanding will remain in effect from July 1, 2020 - June 30, 2021.
27. Either party may terminate this memorandum of understanding by providing the other party with 60 days written notice of their intent to terminate the agreement.

**IN WITNESSED WHEREOF** the parties have a mutual understanding of the processes and conditions regarding the rendering of educational instruction by UCESC staff at Children's Specialized Hospital:

**Children's Specialized Hospital**

**Union County Educational Services Commission**

By:   
 Name: Charles Chianese  
 Title: VP+COO  
 Date: 06-12-2020

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
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 Date: \_\_\_\_\_

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

**APPENDIX A – COMPLIANCE WITH APPLICABLE  
FEDERAL AND STATE FALSE CLAIMS LAWS**

**BACKGROUND/PURPOSE**

Children’s Specialized Hospital (the “Hospital”) is committed to complying with the requirements of Section 6032 of the federal Deficit Reduction Act of 2005, and preventing and detecting any fraud, waste, or abuse in our operations. To this end, the Hospital maintains a compliance program and strives to educate our work force on fraud and abuse laws, including the importance of submitting accurate claims and reports to the federal and state governments.

The Hospital has instituted various procedures, which are incorporated in our Compliance Program, to ensure compliance with these laws and to assist the Hospital in preventing fraud, waste and abuse in federal health care programs. In furtherance of this policy and to comply with the Deficit Reduction Act, the Hospital disseminates this policy to all personnel (including management, contractors and other agents) to ensure that such persons are aware of certain relevant federal and state laws, and that submission of a false claim can result in significant administrative, civil and criminal penalties under the federal False Claims Act and the New Jersey false claims law.

To assist the Hospital in meeting its legal and ethical obligations, personnel who reasonably suspect or are aware of the preparation or submission of a false claim or report or any other potential fraud, waste, or abuse related to a federally or state funded health care program is required to report such information to the Hospital’s Compliance Officer. Personnel who report such information will have the right and opportunity to do so anonymously and will be protected against retaliation for coming forward with such information both under our internal compliance policies and procedures and federal and state law. However, the Hospital retains the right to take appropriate action against any personnel who has participated in a violation of federal or state law or internal policy or intentionally and maliciously reports a false claim. The Hospital is committed to investigating any suspicions of fraud, waste, or abuse swiftly and thoroughly and we require all personnel to assist in such investigations. Failure to report and disclose or assist in an investigation of fraud and abuse is a breach of the personnel’s obligations to the Hospital and may result in disciplinary action, up to, and including termination.

**THE FEDERAL FALSE CLAIMS ACT (31 USC §§3729-3733)**

The Federal False Claims Act (“FCA”) provides, in pertinent part, that:

1) any person who (A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval; (B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim; (C) conspires to commit [the above violations]; . . . or (G) knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government, is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000,<sup>1</sup> plus 3 times the amount of damages which the Government sustains because of the act of that person . . . .

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<sup>1</sup> Although the statutory provisions of the FCA authorizes a range of penalties of from between \$5,000 and \$10,000, those amounts have been adjusted for inflation and increased by regulation to not less than \$5,500 and not more than \$11,000. 28 CFR §85.3(a)(9).

(b) For purposes of this section,

(1) the terms “knowing” and “knowingly” (A) mean that a person, with respect to information-- (i) has actual knowledge of the information; (ii) acts in deliberate ignorance of the truth or falsity of the information; or (iii) acts in reckless disregard of the truth or falsity of the information; and (B) require no proof of specific intent to defraud; and

(2) the term “claim” (A) means any request or demand, whether under a contract or otherwise, for money or property and whether or not the United States has title to the money or property, that-- (i) is presented to an officer, employee, or agent of the United States; or (ii) is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the Government's behalf or to advance a Government program or interest, and if the United States Government (I) provides or has provided any portion of the money or property requested or demanded; or (II) will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded; and

(3) the term “obligation” means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment; and

(4) the term “material” means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property. 31 USC §3729.

While the FCA imposes liability only when the claimant acts “knowingly,” it does not require that the person submitting the claim have actual knowledge that the claim is false. A person who acts in reckless disregard or in deliberate ignorance of the truth or falsity of the information also can be found liable under the FCA. 31 USC §3729(b).

In summary, the FCA imposes liability on any person who submits a claim to the federal government or a contractor of the federal government, or submits a claim to entities administering government funds that he or she knows (or should know) is false. An example may be a physician who submits a bill to Medicare for medical services she knows she has not provided. The FCA also imposes liability on an individual who may knowingly submit a false record in order to obtain payment from the government. An example of this may include a government contractor who submits records that he knows (or should know) are false and that indicate compliance with certain contractual or regulatory requirements. The third area of liability includes those instances in which someone may obtain money from the federal government to which he may not be entitled, and then uses false statements or records in order to retain the money. An example of this so-called “reverse false claim” may include a hospital that obtains interim payments from Medicare or Medicaid throughout the year, and then knowingly files a false cost report at the end of the year in order to avoid making a refund to the Medicare or Medicaid program.

In addition to its substantive provisions, the FCA provides that private parties may bring an action on behalf of the United States. 31 USC §3730(b). These private parties, known as “*qui tam* relators,” may share in a percentage of the proceeds from an FCA action or settlement.

Section 3730(d)(1) of the FCA provides, with some exceptions, that a *qui tam* relator, when the Government has intervened in the lawsuit, shall receive at least 15% but not more than 25% of the proceeds of the FCA action depending upon the extent to which the relator substantially contributed to the prosecution of the action. When the Government does not intervene, the relator shall receive an amount that the court decides is reasonable and shall be not less than 25% and not more than 30%. 31 USC §3730(d)(2).

### **ADMINISTRATIVE REMEDIES FOR FALSE CLAIMS (31 USC §§3801-3812)**

This statute allows for administrative recoveries by federal agencies. If a person submits a claim that the person knows is false or contains false information, or omits material information, then the agency receiving the claim may impose a penalty of up to \$5,000 for each claim. The agency may also recover twice the amount of the claim.

Unlike the FCA, a violation of this law occurs when a false claim is submitted, not when it is paid. Also unlike the FCA, the determination of whether a claim is false, and the imposition of fines and penalties is made by the administrative agency, not by prosecution in the federal court system.

### **NEW JERSEY FALSE CLAIMS ACT (NJSA §2A:32C-1 et seq.)**

The New Jersey False Claims Act closely tracks the FCA. It imposes penalties and fines on individuals and entities that file false or fraudulent claims for payment from any state or local government, including health care programs such as Medicaid. The penalty for filing a false claim is the same as for violations of the FCA, currently no less than \$5,500 and no more than \$11,000 per false claim, plus three times the amount of damages.

The New Jersey False Claims Act allows private individuals to file lawsuits in state court, just as if they were state or local government parties. If the suit eventually concludes with payments back to the government, the person who started the case can recover 25-30% of the proceeds if the government did not participate in the suit, or 15-25% if the government did participate in the suit.

### **NEW JERSEY INSURANCE FRAUD PREVENTION ACT (NJSA §17:33A-1 et seq.)**

The New Jersey Insurance Fraud Prevention Act makes it unlawful to: (i) present or cause to be presented (including the assisting, conspiring or urging of another to present) any written or oral statement as part of, or in support of or opposition to, a claim for payment or other benefit pursuant to an insurance policy knowing the statement contains false or misleading information concerning any fact or thing material to the claim; or (ii) conceal or knowingly fail to disclose the occurrence of an event which affects any person's initial or continued right or entitlement to any insurance benefit of payment or the amount of any benefit or payment to which the person is entitled. A violation of the New Jersey Insurance Fraud Prevention Act can subject a person or entity to civil damages equal to three times the amount of damages; penalties of \$5,000 for the first offense, \$10,000 for the second offense and \$15,000 for each subsequent offense; and a surcharge paid to the State of \$1,000 or 5% of an out-of-court settlement. In addition, the New Jersey Insurance Fraud Prevention Act authorizes the Attorney General to pursue additional criminal penalties. The Medicaid Fraud Division's toll free number is: 888-937-2835.

### **THE MEDICAL ASSISTANCE AND HEALTH SERVICES ACT (NJSA §30:4D-1 et seq.)**

Provisions in this comprehensive law allow for the imposition of criminal fines (up to \$10,000) and terms of imprisonment (up to three years) for various violations involving the submission of claims for payment under the Medicaid program. For instance, such criminal penalties may be imposed upon a health care provider who knowingly and willfully receives Medicaid payments to which the provider is either not entitled or that are in a greater amount than that to which the provider is entitled. The law also allows penalties to be imposed upon an individual or an entity, that knowingly and willfully: (i) makes or causes to be made any false statement or false representation of a material fact in any claim form in order to receive payment; (ii) makes or causes to be made any written or oral false statement for use in determining such payment; or (iii) conceals or fails to disclose the occurrence of an event which affects the right to receive such a payment. Penalties may also be imposed if false

statements or representations of a material fact are made in connection with the conditions or operations of any institution during an initial or re certification process entitling the facility to payments under the Medicaid program. In addition to the criminal fines and jail sentences mentioned above, violators of the Medical Assistance and Health Services Act are also subject to civil penalties, which can include treble damages, interest on the overpayments, and monetary penalties in accordance with the FCA for each false claim submitted.

### **HEALTH CARE CLAIMS FRAUD (NJSA §2C:21-4.3)**

The crime of Health Care Claims Fraud is committed when a false, fictitious, fraudulent or misleading statement of material fact is knowingly or recklessly submitted (or is attempted to be submitted) or a material fact is omitted from any record, bill, claim or other documents in connection with payment or reimbursement for health care services by either a licensed health care practitioner or an unlicensed person. The penalty is a fine of up to five times the monetary amount obtained or sought.

### **FALSE CLAIM FOR PAYMENT OF A GOVERNMENT CONTRACT (NJSA §2C:21-34)**

This New Jersey statute makes it a crime to: (i) knowingly submit to the government any claim for payment for performance of a government contract knowing that the claim is false, fictitious or fraudulent; and (ii) knowingly make a material representation that is false in connection with the negotiation, award or performance of a government contract. The criminal penalties for violations of this statute vary from a crime in the fourth degree to a crime in the second degree depending on the amount of the claim.

### **FEDERAL FALSE CLAIMS ACT (31 USC §3730(h))**

The FCA provides protection to any employee, contractor, or agent who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of their employment as a result of their lawful acts in furtherance of other efforts to stop violations of the FCA. Remedies include reinstatement with comparable seniority as the employee, contractor, or agent would have had but for the discrimination, two times the amount of any back pay, interest on any back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

### **NEW JERSEY FALSE CLAIMS ACT (NJSA §2A:32C-10)**

The New Jersey False Claims Act prohibits employers from adopting or enforcing any rule, regulation, or policy preventing an employee from disclosing information to a state or law enforcement agency or from acting to further a false claims action, including investigating, initiating, testifying, or assisting in an action filed or to be filed under the New Jersey False Claims Act.

The New Jersey False Claim Act also provides protection to qui tam relators who are discharged, demoted, suspended, threatened, harassed, denied promotion or in any other manner discriminated against in the terms and conditions of their employment as a result of their disclosure of information to a state or law enforcement agency or in furthering a false claims action. Remedies may be sought in Superior Court and may include reinstatement with comparable seniority as the qui tam relator would have had but for the discrimination, two times the amount of any back pay, interest on any back pay, punitive damages and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. However, employees may seek such remedies if, and only if, both the following occurred:

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



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

**NEW JERSEY CONSCIENTIOUS EMPLOYEE PROTECTION ACT (NJSA §34:19 ET SEQ.)**

Under the New Jersey Conscientious Employee Protection Act, employers are prevented from taking any retaliatory actions against an employee who discloses (or threatens to disclose) to a supervisor or a public body any activity, policy, or practice of the employer that the employee reasonably believes is fraudulent or criminal and that may defraud a patient or governmental entity, among others. In addition, the New Jersey Conscientious Employee Protection Act protects employees who object or refuse to participate in such activity, policy or practice. Specific protection is also given to licensed or certified health care professionals who object to or refuse to participate in an activity, policy or practice that the employee reasonably believes constitutes improper quality of care.

In regard to disclosures to public bodies, the protections under this statute are not available unless the employee has given his or her employer written notice of the activity, policy or practice in violation of law and has given the employer reasonable opportunity to institute corrections.