

**PROPOSED REVISIONS TO THE UNIFORM JURY INSTRUCTIONS - CRIMINAL  
PROPOSAL 2022-021**

**March 7, 2022**

The Uniform Jury Instructions – Criminal Committee has recommended amendments to UJI 14-4402 NMRA for the Supreme Court’s consideration.

If you would like to comment on the proposed amendments set forth below before the Court takes final action, you may do so by either submitting a comment electronically through the Supreme Court’s web site at <http://supremecourt.nmcourts.gov/open-for-comment.aspx> or sending your written comments by mail, email, or fax to:

Sally A. Paez, Deputy Clerk of Court  
New Mexico Supreme Court  
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Santa Fe, New Mexico 87504-0848  
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**Your comments must be received by the Clerk on or before April 6, 2022**, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court’s web site for public viewing.

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**14-4402. Falsification of documents.**

For you to find the defendant guilty of falsification of documents as charged in Count \_\_\_\_, the State must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant knowingly

[made or caused to be made a misrepresentation of a material fact required to be furnished under the program. A material fact is a fact that is integral to the right to Medicaid payments and that has a natural tendency to influence the Human Services Department to pay for [unnecessary services] [services not provided in the stated quality or amount] [or] [services to a person not authorized to receive them.]

[or]

[failed or caused the failure to include a material fact required to be furnished under the program in any record required to be retained in connection with the program. A material fact is a fact that is integral to the right to Medicaid payments and that has a natural tendency to influence the Human Services Department to pay for [unnecessary services] [services not provided in the stated quality or amount] [or] [services to a person not authorized to receive them.]

[or]

[submitted or caused to be submitted false or incomplete information for the purpose of receiving benefits or qualifying as a provider]<sup>1</sup>.

2. This happened in New Mexico on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.<sup>2</sup>

#### USE NOTES

1. Use only the applicable bracketed elements established by the evidence.
2. The applicable definition or definitions from UJI 14-4401 NMRA must be given after this instruction.

[Adopted by Supreme Court Order No. 14-8300-005, effective for all cases filed or pending on or after December 31, 2014; as amended by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]

**Committee commentary.** — See NMSA 1978, § 30-44-4 (1989).

The Medicaid Fraud Act, NMSA 1978, §§ 30-44-1 to 30-44-8 (1989, as amended through 2004), delegates to the Human Services Department the authority to establish broad and detailed record and reporting requirements by regulation—enforceable by civil and criminal penalties. See, e.g., § 30-44-5(A)(4); § 30-44-8(F). Section 30-44-4(A) has two distinct provisions for falsification of documents: Section 30-44-4(A)(1) explicitly requires that the fact in question be “material.” Section 30-44-4(A)(2) does not require that the false or incomplete information be “material.” The Committee believes that this distinction was intentional because under Section 30-44-4(A)(2), in addition to the requirement that a defendant act knowingly, the Legislature also required a showing that the false or incomplete information was submitted for the “purpose” of receiving benefits or qualifying as a provider.

Both subsections require knowing conduct, i.e., conscious behavior between general criminal intent and specific intent. See *State v. Ramos*, 2013-NMSC-031, ¶ 28, 305 P.3d 921 (discussing scienter required for violating an order of protection); see also *State v. Hernandez*, No. 32,109, mem. op. ¶ 25 (N.M. Ct. App. Nov. 19, 2014) (non-precedential) (construing *Ramos*, 2013-NMSC-031, in the context of Medicaid false document charge).

The Fifth and Sixth Amendments to the United States Constitution require trial courts to submit the issue of materiality to the jury. *United States v. Gaudin*, 515 U.S. 506, 511, 522-23 (1995) (false statement on loan documents); *State v. Benavidez*, 1999-NMCA-053, ¶¶ 14-16, 127 N.M. 189, 979 P.2d 234 (following *Gaudin* and holding materiality of a false statement is a mixed question of law and fact for the jury), *rev’d on other grounds*, 1999-NMSC-041, ¶¶ 2, 5, 128 N.M. 261, 992 P.2d 274.

The touchstone of materiality is whether the statement or omission has a “natural tendency” to influence the decision of the relevant agency or tribunal. See, e.g., *State v. Silva*, 2007-NMCA-117, ¶ 16, 168 P.3d 1110 (citing *Benavidez*, 1999-NMCA-053, ¶ 26), *rev’d on other grounds*, 2008-NMSC-051, 192 P.3d 1192; *State v. Watkins*, 1979-NMCA-003, ¶ 38, 590 P.2d 169 (citing *United States v. Abrams*, 568 F.2d 411 (5th Cir. 1978)).

The Medicaid Fraud Act does not provide a definition of “material.” Sections 30-44-1 to -8; cf. NMSA 1978, § 30-16-29 (1971) (Fraudulent taking, receiving, or transferring credit cards). Further, “not every regulatory deficiency constitutes actionable false or fraudulent conduct under the [Medicaid Fraud Act].” *State ex rel. King v. Behavioral Home Care, Inc.*, 2015-NMCA-035, ¶ 27, 346 P.3d 377.

To assist the jury in determining whether a misrepresentation or omission of fact was material, the Committee believes that, in addition to the “natural tendency” general definition of materiality, materiality in the context of the Medicaid Fraud Act requires a nexus to facts about

the nature, quality, amount, or medical necessity of services to an eligible recipient that affects payment of Medicaid funds. See 8.302.1.17 NMAC; Behavioral Home Care, Inc., 2015- NMCA-035, ¶ 21 (“Section 30–44–7(A)(3) NMSA imposes a materiality element which requires that the false or fraudulent certification be *integral to the government’s payment decision.*” (emphasis added)).

Unlike the Medicaid Fraud Act’s failure to retain records (NMSA 1978, § 30-44-5) or Medicaid fraud (NMSA 1978, § 30-44-7) sections, falsification of documents (NMSA 1978, § 30-44-4) does not predicate punishment on a dollar amount.

[Adopted by Supreme Court Order No. 14-8300-005, effective for all cases filed or pending on or after December 31, 2014; as amended by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]