

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

For you to find the defendant guilty of falsification of documents as charged in Count \_\_\_\_, the [State] 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           1.       Use only the applicable bracketed elements established by the evidence.

2           2.       The applicable definition or definitions from UJI 14-4401 NMRA must be given  
3 after this instruction.

4 [Adopted by Supreme Court Order No. 14-8300-005, effective for all cases filed or pending on  
5 or after December 31, 2014; as amended by Supreme Court Order No. 22-8300-034, effective for  
6 all cases pending or filed on or after December 31, 2022.]

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

8           The Medicaid Fraud Act, NMSA 1978, §§ 30-44-1 to 30-44-8 (1989, as amended through  
9 2004), delegates to the Human Services Department the authority to establish broad and detailed  
10 record and reporting requirements by regulation—enforceable by civil and criminal penalties. *See,*  
11 *e.g.*, § 30-44-5(A)(4); § 30-44-8(F). Section 30-44-4(A) has two distinct provisions for  
12 falsification of documents: Section 30-44-4(A)(1) explicitly requires that the fact in question be  
13 “material.” Section 30-44-4(A)(2) does not require that the false or incomplete information be  
14 “material.” The Committee believes that this distinction was intentional because under Section 30-  
15 44-4(A)(2), in addition to the requirement that a defendant act knowingly, the Legislature also  
16 required a showing that the false or incomplete information was submitted for “the purpose of  
17 receiving benefits or qualifying as a provider.”

18           Both subsections require knowing conduct, i.e., conscious behavior between general  
19 criminal intent and specific intent. *See State v. Ramos*, 2013-NMSC-031, ¶ 28, 305 P.3d 921  
20 (discussing scienter required for violating an order of protection); *see also State v. Hernandez*, A-  
21 1-CA-32109, mem. op. ¶ 25 (N.M. Ct. App. Nov. 19, 2014) (nonprecedential) (construing *Ramos*,  
22 2013-NMSC-031, in the context of Medicaid false document charge).

23           The Fifth and Sixth Amendments to the United States Constitution require trial courts to

1 submit the issue of materiality to the jury. *United States v. Gaudin*, 515 U.S. 506, 508, 511, 522-  
2 23 (1995) (reviewing conviction of making false statements on loan documents); *State v.*  
3 *Benavidez*, 1999-NMCA-053, ¶¶ 14-16, 127 N.M. 189, 979 P.2d 234 (following *Gaudin* and  
4 holding materiality of a false statement is a mixed question of law and fact for the jury), *rev'd on*  
5 *other grounds*, 1999-NMSC-041, ¶¶ 2, 5, 128 N.M. 261, 992 P.2d 274.

6 The touchstone of materiality is whether the statement or omission “has a natural tendency  
7 to influence” the decision of the relevant agency or tribunal. *See, e.g., State v. Silva*, 2007-NMCA-  
8 117, ¶ 16, 168 P.3d 1110 (quoting *Benavidez*, 1999-NMCA-053, ¶ 26), *rev'd on other grounds*,  
9 2008-NMSC-051, 192 P.3d 1192; *State v. Watkins*, 1979-NMCA-003, ¶ 38, 92 N.M. 470, 590  
10 P.2d 169 (citing *United States v. Abrams*, 568 F.2d 411 (5th Cir. 1978)).

11 The Medicaid Fraud Act does not provide a definition of “material.” Sections 30-44-1 to -  
12 8; *cf.* NMSA 1978, § 30-16-29 (1971) (providing no definition of material in the offense of  
13 fraudulent taking, receiving, or transferring credit cards). Further, “not every regulatory deficiency  
14 constitutes actionable false or fraudulent conduct under the [Medicaid Fraud Act].” *State ex rel.*  
15 *King v. Behavioral Home Care, Inc.*, 2015-NMCA-035, ¶ 27, 346 P.3d 377.

16 To assist the jury in determining whether a misrepresentation or omission of fact was  
17 material, the Committee believes that, in addition to the “natural tendency” general definition of  
18 materiality, materiality in the context of the Medicaid Fraud Act requires a nexus to facts about  
19 “the nature, quality, amount, and medical necessity of services furnished to an eligible recipient”  
20 that affects payment of Medicaid funds. *See* 8.302.1.17 NMAC; *Behavioral Home Care, Inc.*,  
21 2015- NMCA-035, ¶ 21 (“Section 30-44-7(A)(3) imposes a materiality element which requires  
22 that the false or fraudulent certification be *integral to the government’s payment decision.*”  
23 (emphasis added)).

1        Unlike the offense under the Medicaid Fraud Act of failure to retain records, § 30-44-5, or  
2        Medicaid fraud, § 30-44-7, falsification of documents (§ 30-44-4) does not predicate punishment  
3        on a dollar amount.

4        [Adopted by Supreme Court Order No. 14-8300-005, effective for all cases filed or pending on or  
5        after December 31, 2014; as amended by Supreme Court Order No. 22-8300-034, effective for all  
6        cases pending or filed on or after December 31, 2022.]