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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 985 Session of  
2020

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INTRODUCED BY BOSCOLA, FARNESE, SCHWANK AND YUDICHAK,  
JANUARY 15, 2020

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REFERRED TO HEALTH AND HUMAN SERVICES, JANUARY 15, 2020

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AN ACT

1 Amending the act of June 13, 1967 (P.L.31, No.21), entitled "An  
2 act to consolidate, editorially revise, and codify the public  
3 welfare laws of the Commonwealth," in fraud and abuse  
4 control, further providing for definitions, for restrictions  
5 on provider charges and payments, for provider prohibited  
6 acts and criminal penalties and civil remedies and for venue  
7 and limitations on actions.

8 The General Assembly of the Commonwealth of Pennsylvania  
9 hereby enacts as follows:

10 Section 1. The definitions of "provider" and "recipient" in  
11 section 1401 of the act of June 13, 1967 (P.L.31, No.21), known  
12 as the Human Services Code, are amended and the section is  
13 amended by adding definitions to read:

14 Section 1401. Definitions.--The following words and phrases  
15 when used in this article shall have, unless the context clearly  
16 indicates otherwise, the meanings given to them in this section:

17 "Claim" means any request for payment.

18 \* \* \*

19 "National Provider Identifier" or "NPI" means the national  
20 unique health identifier for health care providers as defined in

1 45 CFR 162.406 et seq. (relating to standard unique health  
2 identifier for health care providers).

3 "Person" means an individual, medical facility or entity.

4 \* \* \*

5 "Provider" [means any individual or medical facility which  
6 signs an agreement with the department to participate in the  
7 medical assistance program, including, but not limited to,  
8 licensed practitioners, pharmacies, hospitals, nursing homes,  
9 clinics, home health agencies and medical purveyors.] means a  
10 person which provides goods or services under the medical  
11 assistance program, whether or not there is an agreement with  
12 the department to participate in the medical assistance program.  
13 The term includes any person who has an agreement with either a  
14 party to a provider agreement with the department or with a  
15 medical assistance contractor or health maintenance  
16 organization, under which the person agrees to provide goods or  
17 services reimbursable under the medical assistance program.

18 \* \* \*

19 "Recipient" [means an eligible person who receives medical  
20 assistance from a participating provider.] means an individual  
21 who receives goods or services from a provider under the medical  
22 assistance program.

23 "Record" means:

24 (1) a medical, professional, financial or business record  
25 relating to:

26 (i) the treatment or care of a recipient; or

27 (ii) goods or services provided to any recipient; and

28 (2) a record that is required by the rules or regulations of  
29 the department to be retained for the medical assistance  
30 program.

1 \* \* \*

2 "State Provider Identifier" or "SPI" means a State-issued  
3 unique health identifier for persons providing goods or services  
4 reimbursed by the medical assistance program, with no  
5 intelligence about the person in the number.

6 "Statement or representation" means a communication that is  
7 used to identify an item of goods or services for which  
8 reimbursement is being sought under the medical assistance  
9 program, or that is or may be used to determine a rate of  
10 reimbursement under the medical assistance program.

11 Section 2. Section 1406 of the act is amended to read:

12 Section 1406. Restrictions on Provider Charges and  
13 Payments.--(a) An individual seeking to provide goods or  
14 services paid for, in whole or in part, with medical assistance  
15 funds must have a National Provider Identifier or State Provider  
16 Identifier. An individual who does not have an NPI must register  
17 with the department and obtain an SPI prior to providing goods  
18 or services under the medical assistance program.

19 (b) The department shall establish and mandate standardized  
20 training for all persons providing services utilizing an SPI.  
21 The standardized training for each specific type of service must  
22 be completed prior to providing services. At a minimum, the  
23 standardized training shall:

24 (1) be specific to the type of service being provided;

25 (2) focus on the required level or care the recipient is to  
26 receive and what services are appropriately billable under that  
27 program; and

28 (3) provide information on how to contact the appropriate  
29 protective services agencies and where to report fraud within  
30 the medical assistance program.

1 (c) A claim submitted for medical assistance reimbursement,  
2 whether to the department or any of its contractors, must  
3 include:

4 (1) the NPI or SPI for the individual providing the good or  
5 service;

6 (2) every date that a good or service was provided; and

7 (3) start and end times for each date of service. For per  
8 diem claims, a start and end time for each date of service shall  
9 not be required.

10 (d) All payments made to providers under the medical  
11 assistance program shall constitute full reimbursement to the  
12 provider for covered services rendered. Providers may not seek  
13 or request supplemental or additional payments from recipients  
14 for covered services unless authorized by law or regulation; nor  
15 may a provider charge a recipient for other services to  
16 supplement a covered service paid for by the department.  
17 However, nothing in this act shall preclude charges for  
18 uncovered services rendered to a recipient.

19 [(b)] (e) Charges made to the department by a provider for  
20 covered services or items furnished shall not exceed, in any  
21 case, the usual and customary charges made to the general public  
22 by such provider for the same services or items.

23 (f) As used in this section, the following words and phrases  
24 shall have the meanings given to them in this subsection unless  
25 the context clearly indicates otherwise:

26 "Provider" shall mean a person that provides goods or  
27 services that are reimbursed by the medical assistance program.  
28 The term includes:

29 (1) a person with an agreement with the department to  
30 participate in the medical assistance program;

1 (2) an individual providing services reimbursed by the  
2 medical assistance program; or

3 (3) a person who has an agreement with either a party to a  
4 provider agreement with the department or with a medical  
5 assistance contractor or health maintenance organization, under  
6 which the person agrees to provide goods or services  
7 reimbursable under the medical assistance program.

8 "Recipient" shall mean an individual who receives goods or  
9 services from a provider under the medical assistance program.

10 Section 3. Section 1407(a), (b)(1) and (c)(3) of the act are  
11 amended and the section is amended by adding a subsection to  
12 read:

13 Section 1407. Provider Prohibited Acts, Criminal Penalties  
14 and Civil Remedies.--(a) It shall be unlawful for any person  
15 to[:

16 (1) Knowingly or intentionally present for allowance or  
17 payment any false or fraudulent claim or cost report for  
18 furnishing services or merchandise under medical assistance, or  
19 to knowingly present for allowance or payment any claim or cost  
20 report for medically unnecessary services or merchandise under  
21 medical assistance, or to knowingly submit false information,  
22 for the purpose of obtaining greater compensation than that to  
23 which he is legally entitled for furnishing services or  
24 merchandise under medical assistance, or to knowingly submit  
25 false information for the purpose of obtaining authorization for  
26 furnishing services or merchandise under medical assistance.]  
27 knowingly or intentionally:

28 (1) (i) make or cause to be made a materially false,  
29 fraudulent or misleading statement, claim or representation in  
30 any record used by a person in connection with providing goods

1 or services to any recipient under the medical assistance  
2 program; or

3 (ii) submit or cause to be submitted false information for  
4 the purpose of obtaining greater compensation than that to which  
5 the person is legally entitled for furnishing goods or services  
6 under the medical assistance program.

7 (2) Solicit or receive or to offer or pay any remuneration,  
8 including any kickback, bribe or rebate, directly or indirectly,  
9 in cash or in kind from or to any person in connection with the  
10 furnishing of services or merchandise for which payment may be  
11 in whole or in part under the medical assistance program or in  
12 connection with referring an individual to a person for the  
13 furnishing or arranging for the furnishing of any services or  
14 merchandise for which payment may be made in whole or in part  
15 under the medical assistance program.

16 (3) Submit or cause to be submitted a duplicate claim for  
17 services, supplies or equipment for which the provider has  
18 already received or claimed reimbursement from any source.

19 (4) Submit or cause to be submitted a claim for services,  
20 supplies or equipment which were not rendered to a recipient.

21 (5) Submit or cause to be submitted a claim for services,  
22 supplies or equipment which includes costs or charges not  
23 related to such services, supplies or equipment rendered to the  
24 recipient.

25 (6) Submit or cause to be submitted a claim or refer a  
26 recipient to another provider by referral, order or  
27 prescription, for services, supplies or equipment which are not  
28 documented in the record in the prescribed manner and are of  
29 little or no benefit to the recipient, are below the accepted  
30 medical treatment standards, or are unneeded by the recipient.

1 (7) Submit or cause to be submitted a claim which  
2 misrepresents the description of services, supplies or equipment  
3 dispensed or provided; the dates of services; the identity of  
4 the recipient; the identity of the attending, prescribing or  
5 referring practitioner; or the identity of the actual provider.

6 (8) Submit or cause to be submitted a claim for  
7 reimbursement for a service, charge or item at a fee or charge  
8 which is higher than the provider's usual and customary charge  
9 to the general public for the same service or item.

10 (9) Submit or cause to be submitted a claim for a service or  
11 item which was not rendered by the provider.

12 (10) Dispense, render or provide a service or item without a  
13 practitioner's written order and the consent of the recipient,  
14 except in emergency situations, or submit a claim for a service  
15 or item which was dispensed, or provided without the consent of  
16 the recipient, except in emergency situations.

17 (11) Except in emergency situations, dispense, render or  
18 provide a service or item to a patient claiming to be a  
19 recipient without making a reasonable effort to ascertain by  
20 verification through a current medical assistance identification  
21 card, that the person or patient is, in fact, a recipient who is  
22 eligible on the date of service and without another available  
23 medical resource.

24 (12) Enter into an agreement, combination or conspiracy to  
25 obtain or aid another to obtain reimbursement or payments for  
26 which there is not entitlement.

27 (13) Make a false statement in the application for  
28 enrollment as a provider.

29 (14) Commit any of the prohibited acts described in section  
30 1403(d)(1), (2), (4) and (5).

1 (15) Submit or cause to be submitted any record for the  
2 purposes of obtaining reimbursement from the medical assistance  
3 program during any time period when the person is excluded or  
4 precluded from participation in the medical assistance program  
5 or when the person is on the Federal list of excluded  
6 individuals and entities.

7 (b) (1) [A person who violates any provision of subsection  
8 (a), excepting subsection (a)(11), is guilty of a felony of the  
9 third degree for each such violation with a maximum penalty of  
10 fifteen thousand dollars (\$15,000) and seven years imprisonment.  
11 A violation of subsection (a) shall be deemed to continue so  
12 long as the course of conduct or the defendant's complicity  
13 therein continues; the offense is committed when the course of  
14 conduct or complicity of the defendant therein is terminated in  
15 accordance with the provisions of 42 Pa.C.S. § 5552(d) (relating  
16 to other offenses). Whenever any person has been previously  
17 convicted in any state or Federal court of conduct that would  
18 constitute a violation of subsection (a), a subsequent  
19 allegation, indictment or information under subsection (a) shall  
20 be classified as a felony of the second degree with a maximum  
21 penalty of twenty-five thousand dollars (\$25,000) and ten years  
22 imprisonment.] (i) A person who violates subsection (a)(1),  
23 (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13)  
24 or (14) is guilty of:

25 (A) A felony of the second degree if the amount of excess  
26 benefits or payments, whether claimed or actually paid, is over  
27 \$100,000 or if the person has a prior conviction in any Federal  
28 or State court for conduct that would constitute a violation of  
29 subsection (a).

30 (B) A felony of the third degree if the amount of excess of

1 benefits or payments, whether claimed or actually paid, is over  
2 \$2,000 but less than \$100,000.

3 (C) A misdemeanor of the first degree if the amount of  
4 excess benefits or payments, whether claimed or actually paid,  
5 is less than \$2,000.

6 (ii) A person who violates subsection (a)(15) if guilty of a  
7 felony of the second degree.

8 \* \* \*

9 (b.1) Continuing course of conduct or complicity.--A  
10 violation of subsection (a) shall be deemed to continue so long  
11 as the course of conduct or the defendant's complicity in the  
12 conduct continues. An offense is committed when the course of  
13 conduct or complicity of the defendant in the conduct is  
14 terminated as provided under 42 Pa.C.S. § 5552(d) (relating to  
15 other offenses).

16 (c) \* \* \*

17 (3) [Notice of any action taken by the department against a  
18 provider pursuant to clauses (1) and (2) will be forwarded by  
19 the department to the Medicaid Fraud Control Unit of the  
20 Department of Justice and to the appropriate licensing board of  
21 the Department of State for appropriate action, if any. In  
22 addition, the department will forward to the Medicaid Fraud  
23 Control Unit of the Department of Justice and the appropriate  
24 Pennsylvania licensing board of the Department of State any  
25 cases of suspected provider fraud.] The department shall forward  
26 notice of any action taken by the department against a provider  
27 under clauses (1) and (2) to the Medicaid Fraud Control Unit of  
28 the Office of Attorney General and to the appropriate licensing  
29 board of the Department of State for appropriate action, if any.  
30 In addition, the department shall forward to the Medicaid Fraud

1 Control Unit of the Office of Attorney General and the  
2 appropriate Pennsylvania licensing board of the Department of  
3 State any cases of suspected provider fraud.

4 Section 4. Section 1411 of the act is amended to read:

5 Section 1411. Venue and Limitations on Actions.--(a) Any  
6 civil actions or criminal prosecutions brought pursuant to this  
7 act for violations hereof shall be commenced within five years  
8 of the date the violation or violations occur. [In addition, any  
9 such actions or prosecutions may be brought in any county where  
10 the offender has an office or place of business or where claims  
11 and payments are processed by the Commonwealth or where  
12 authorized by the Rules of the Pennsylvania Supreme Court.]

13 (b) Any civil actions or criminal prosecutions brought under  
14 this act may be brought in:

15 (1) any county where the offender has an office or place of  
16 business;

17 (2) any county where claims or payments are processed by the  
18 Commonwealth or its contractor or subcontractor;

19 (3) the county in which the records were submitted or  
20 processed;

21 (4) the county where the goods or services were alleged to  
22 have been provided; or

23 (5) any county where authorized by the Pennsylvania Rules of  
24 Criminal Procedure or other applicable rules of court.

25 Section 5. This act shall take effect in 60 days.