

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2351 Session of 2020

INTRODUCED BY THOMAS, GROVE, KAUFER, GAYDOS, OWLETT, SANKEY, JONES, MILLARD, BERNSTINE, RYAN, WHEELAND, SAYLOR, COX, MOUL, KEEFER, KLUNK, DUSH, B. MILLER, RADER, ROWE AND NELSON, APRIL 3, 2020

AS REPORTED FROM COMMITTEE ON HUMAN SERVICES, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 9, 2020

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 and for provider
5 prohibited acts, criminal penalties and civil remedies.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Section 1401 of the act of June 13, 1967 (P.L.31,
9 No.21), known as the Human Services Code, is amended by adding a
10 definition to read:

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

14 * * *

15 "Statement or representation" means a communication that is
16 used to identify goods or services for which reimbursement is
17 sought under the medical assistance program or that is or may be
18 used to determine a rate of reimbursement under the medical

1 assistance program.

2 Section 2. Section 1407 of the act is amended to read:

3 Section 1407. Provider Prohibited Acts, Criminal Penalties
4 and Civil Remedies.--(a) It shall be unlawful for any person to
5 knowingly or intentionally:

6 (1) [Knowingly or intentionally present for allowance or
7 payment any false or fraudulent claim or cost report for
8 furnishing services or merchandise under medical assistance, or
9 to knowingly present for allowance or payment any claim or cost
10 report for medically unnecessary services or merchandise under
11 medical assistance, or to knowingly submit false information,
12 for the purpose of obtaining greater compensation than that to
13 which he is legally entitled for furnishing services or
14 merchandise under medical assistance, or to knowingly submit
15 false information for the purpose of obtaining authorization for
16 furnishing services or merchandise under medical assistance.]

17 Make or cause to be made a materially false, fraudulent or
18 misleading statement, claim or representation in any record used
19 by any person in connection with providing goods or services to
20 any recipient under the medical assistance program.

21 (1.1) Submit or cause to be submitted false information for
22 the purpose of obtaining greater compensation than that to which
23 the person is legally entitled for furnishing goods or services
24 under the medical assistance program.

25 (1.2) Submit or cause to be submitted a claim for medically
26 unnecessary or inadequate services or merchandise provided to a
27 recipient under the medical assistance program.

28 (2) Solicit or receive or to offer or pay any remuneration,
29 including any kickback, bribe or rebate, directly or indirectly,
30 in cash or in kind from or to any person in connection with the

1 furnishing of services or merchandise for which payment may be
2 in whole or in part under the medical assistance program or in
3 connection with referring an individual to a person for the
4 furnishing or arranging for the furnishing of any services or
5 merchandise for which payment may be made in whole or in part
6 under the medical assistance program.

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

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

12 (5) Submit or cause to be submitted a claim for services,
13 supplies or equipment which includes costs or charges not
14 related to such services, supplies or equipment rendered to the
15 recipient.

16 (6) Submit or cause to be submitted a claim or refer a
17 recipient to another provider by referral, order or
18 prescription, for services, supplies or equipment which are not
19 documented in the record in the prescribed manner and are of
20 little or no benefit to the recipient, are below the accepted
21 medical treatment standards, or are unneeded by the recipient.

22 (7) Submit or cause to be submitted a claim which
23 misrepresents the description of services, supplies or equipment
24 dispensed or provided; the dates of services; the identity of
25 the recipient; the identity of the attending, prescribing or
26 referring practitioner; or the identity of the actual provider.

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

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

3 (10) Dispense, render or provide a service or item without a
4 practitioner's written order and the consent of the recipient,
5 except in emergency situations, or submit a claim for a service
6 or item which was dispensed, or provided without the consent of
7 the recipient, except in emergency situations.

8 (11) Except in emergency situations, dispense, render or
9 provide a service or item to a patient claiming to be a
10 recipient without making a reasonable effort to ascertain by
11 verification through a current medical assistance identification
12 card, that the person or patient is, in fact, a recipient who is
13 eligible on the date of service and without another available
14 medical resource.

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

18 (13) Make a false statement in the application for
19 enrollment as a provider.

20 (14) Commit any of the prohibited acts described in section
21 1403(d) (1), (2), (4) and (5).

22 (15) Submit or cause to be submitted any record for the
23 purposes of obtaining reimbursement from the medical assistance
24 program during any time period when the person is excluded or
25 precluded from participation in the medical assistance program
26 or when the person is on the Federal List of Excluded
27 Individuals/Entities.

28 (b) (1) [A person who violates any provision of subsection
29 (a), excepting subsection (a) (11), is guilty of a felony of the
30 third degree for each such violation with a maximum penalty of

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

14 (2)] A person who violates subsection (a), excluding the
15 provisions of subsection (a)(15), commits:

16 (i) A felony of the second degree if the amount of excess
17 payments, whether claimed or actually paid, is over one hundred
18 thousand dollars (\$100,000) or if the person has a prior
19 conviction in any state or Federal court for conduct that would
20 constitute a violation of subsection (a).

21 (ii) A felony of the third degree if the amount of excess
22 payments, whether claimed or actually paid, is over two thousand
23 dollars (\$2,000) but less than one hundred thousand dollars
24 (\$100,000).

25 (iii) A misdemeanor of the first degree if the amount of
26 excess payments, whether claimed or actually paid, is less than
27 two thousand dollars (\$2,000).

28 (2) A person who violates subsection (a)(15) commits a
29 felony of the second degree.

30 (b.1) (1) In addition to the penalties provided under

1 subsection (b), the trial court shall order any person convicted
2 under subsection (a):

3 (i) to repay the amount of the excess benefits or payments
4 plus interest on that amount at the maximum legal rate from the
5 date payment was made by the Commonwealth to the date repayment
6 is made to the Commonwealth;

7 (ii) to pay an amount not to exceed threefold the amount of
8 excess benefits or payments.

9 (2) (Reserved).

10 (3) Any person convicted under subsection (a) shall be
11 ineligible to participate in the medical assistance program for
12 a period of five years from the date of conviction. The
13 department shall notify any provider so convicted that the
14 provider agreement is terminated for five years, and the
15 provider is entitled to a hearing on the sole issue of identity.
16 If the conviction is set aside on appeal, the termination shall
17 be lifted.

18 (4) The Attorney General and the district attorneys of the
19 several counties shall have concurrent authority to institute
20 criminal proceedings under the provisions of this section.

21 (5) As used in this section the following words and phrases
22 shall have the following meanings:

23 "Conviction" means a verdict of guilty, a guilty plea, or a
24 plea of nolo contendere in the trial court.

25 "Medically unnecessary or inadequate services or merchandise"
26 means services or merchandise which are unnecessary or
27 inadequate as determined by medical professionals engaged by the
28 department who are competent in the same or similar field within
29 the practice of medicine.

30 "PERSON." THE TERM DOES NOT INCLUDE A RECIPIENT RECEIVING <--

1 PUBLIC SUPPORT SERVICES UNLESS THE RECIPIENT KNOWINGLY OR
2 INTENTIONALLY COMMITS A PROHIBITED ACT UNDER SUBSECTION (A) AND
3 BENEFITS FINANCIALLY FROM THE VIOLATION.

4 (b.2) A violation of subsection (a) shall be deemed to
5 continue so long as the course of conduct or the person's
6 complicity in the course of conduct continues. An offense is
7 committed when the course of conduct or complicity of the person
8 in the course of conduct is terminated as provided under 42
9 Pa.C.S. § 5552(d) (relating to other offenses).

10 (c) (1) If the department determines that a provider has
11 committed any prohibited act or has failed to satisfy any
12 requirement under [section 1407(a)] subsection (a), it shall
13 have the authority to immediately terminate, upon notice to the
14 provider, the provider agreement and to institute a civil suit
15 against such provider in the court of common pleas for twice the
16 amount of excess benefits or payments plus legal interest from
17 the date the violation or violations occurred. The department
18 shall have the authority to use statistical sampling methods to
19 determine the appropriate amount of restitution due from the
20 provider.

21 (2) Providers who are terminated from participation in the
22 medical assistance program for any reason shall be prohibited
23 from owning, arranging for, rendering or ordering any service
24 for medical assistance recipients during the period of
25 termination. In addition, such provider may not receive, during
26 the period of termination, reimbursement in the form of direct
27 payments from the department or indirect payments of medical
28 assistance funds in the form of salary, shared fees, contracts,
29 kickbacks or rebates from or through any participating provider.

30 (3) [Notice of any action taken by the department against a

1 provider pursuant to clauses (1) and (2) will be forwarded by
2 the department to the Medicaid Fraud Control Unit of the
3 Department of Justice and to the appropriate licensing board of
4 the Department of State for appropriate action, if any. In
5 addition, the department will forward to the Medicaid Fraud
6 Control Unit of the Department of Justice and the appropriate
7 Pennsylvania licensing board of the Department of State any
8 cases of suspected provider fraud.] The department shall forward
9 notice of any action taken by the department against a provider
10 under this section to the Medicaid Fraud Control Unit of the
11 Office of Attorney General and to the appropriate licensing
12 board of the Department of State for appropriate action. The
13 department shall forward to the Medicaid Fraud Control Unit of
14 the Office of Attorney General and the appropriate licensing
15 board of the Department of State any cases of suspected provider
16 fraud.

17 (d) It shall be considered an affirmative defense to
18 prosecution of an offense under this section if a person was a
19 recipient of goods or services through the medical assistance
20 program and did not knowingly or intentionally commit a
21 prohibited act under this section.

22 Section 3. This act shall take effect in 60 days.